FORM 8-K

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934
Date of report (Date of earliest event reported): April 8, 2021 (April 8, 2021)

PAR Technology Corporation

(Exact name of registrant as specified in its charter)

Delaware	1-09720	16-1434688
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

PAR Technology Park, 8383 Seneca Turnpike, New Hartford, New York 13413-4991
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (315) 738-0600

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock	PAR	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement.

On April 8, 2021, PAR Technology Corporation, a Delaware corporation ("PAR Technology"), ParTech, Inc., a New York corporation (the "Company") and a wholly owned subsidiary of PAR Technology, and Sliver Merger Sub, Inc., a Delaware corporation ("Merger Sub") and a wholly owned subsidiary of the Company, entered into an Agreement and Plan of Merger (the "Merger Agreement") with Punchh Inc., a Delaware corporation ("Punchh"), and Fortis Advisors LLC, a Delaware limited liability company ("Stockholder Representative") and solely in its capacity as the initial Stockholder Representative.

Pursuant to the Merger Agreement, on April 8, 2021, Merger Sub merged with and into Punchh (the "Merger"), with Punchh surviving the Merger and becoming a wholly-owned subsidiary of PAR Technology.

In connection with the Merger, PAR Technology paid former Punchh stockholders (including holders of vested options and warrants) in the aggregate approximately (1) $390.0 million in cash (the "Cash Consideration"), and (2) 1,594,202 common shares of PAR Technology (the "Share Consideration"), in each case subject to certain adjustments (including customary adjustments for Punchh cash, debt, debt-like items, and net working capital at closing). At issuance, the shares of PAR Technology common stock comprising the Share Consideration will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or other applicable securities laws; however, pursuant to the Merger Agreement, PAR Technology has agreed to register the shares for resale under the Securities Act and other applicable securities laws.

In addition, at the closing of the Merger, PAR assumed outstanding unvested options of Punchh, which were converted into unvested options of PAR Technology. The issuance of shares of PAR Technology common stock upon the exercise of unvested options held by certain Punchh employees is subject to obtaining the approval of PAR Technology stockholders. Prior to obtaining such stockholder approval, such unvested options may, upon vesting, be exercised for a cash payment equal to the spread value of the option at the time of exercise.

The description of the Merger Agreement herein does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 2.1 and is incorporated into this Current Report on Form 8-K by reference in its entirety. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual or disclosure information about PAR Technology or the other parties to the Merger Agreement. In particular, the assertions embodied in the representations and warranties contained in the Merger Agreement are qualified by information in confidential disclosure schedules provided by the parties in connection with the signing of the Merger Agreement. The confidential disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties in the Merger Agreement and were used for the purpose of allocating risk between the parties rather than establishing matters as facts. The Merger Agreement contains representations, warranties and covenants by the parties to the Merger Agreement, and those representations, warranties and covenants may apply standards of materiality in a way that is different from what may be viewed as material to the reader or other investors. Accordingly, investors should not rely on the representations, warranties and covenants in the Merger Agreement, or any description thereof, as characterizations of the actual state of facts or conditions. Investors should review the Merger Agreement, or any descriptions thereof, not in isolation, but only in conjunction with the other information about PAR Technology that it includes in reports, statements and other filings it makes with the Securities and Exchange Commission ("SEC").

Debt Financing

In connection with, and to partially fund the Cash Consideration for, the Merger, on April 8, 2021, PAR Technology entered into a Credit Agreement (the "Credit Agreement"), by and among PAR Technology, as the borrower (the "Borrower"), certain of the Borrower's US subsidiaries, as guarantors (the "Subsidiary Guarantors"), the lenders party thereto, and Owl Rock First Lien Master Fund, L.P., as administrative agent and collateral agent. The Credit Agreement provides for a term loan in an initial aggregate principal amount of $180.0 million (the "Credit Facility" and, the loans thereunder, the "Term Loans"). The Credit Facility may be increased by up to $25 million, plus an additional unlimited amount subject to compliance with a first lien net annual recurring revenue leverage ratio test of 2.10 to 1.00.

The Credit Facility matures four (4) years from the date of the Credit Agreement. The Term Loans bear interest at a rate equal to either a base rate plus a margin of 3.75%, or a Eurocurrency rate plus a margin of 4.75%, as selected by the Borrower. Voluntary prepayments of the Term Loans, as well as certain mandatory prepayments of the Term Loans, require payment of a prepayment premium of 2.0% during the first year of the Credit Facility and 1.0% during the second and third year of the Credit Facility.

Under the Credit Agreement, the Borrower is required to maintain liquidity of at least $20 million and a first lien net annual recurring revenue leverage ratio of no greater than the level set forth in the Credit Agreement for the relevant quarter, which starts at 2.60 to 1.00 and declines over time to 1.30 to 1.00.

The Credit Facility is secured by substantially all of the assets of the Borrower and of the Subsidiary Guarantors. The Credit Agreement contains customary representations and warranties and affirmative and negative covenants, including covenants that restrict the ability of the Borrower and its subsidiaries to incur additional indebtedness, incur or permit to exist liens on assets, make investments and acquisitions, consolidate or merge, engage in asset sales and pay dividends. Obligations under the Credit Agreement may be accelerated upon certain customary events of default (subject to grace or cure periods, as appropriate).

The foregoing description of the Credit Agreement and resulting Credit Facility does not purport to be complete and is qualified in its entirety by reference to the complete text of the Credit Agreement, a copy of which is filed as Exhibit 10.1 and is incorporated into this Current Report on Form 8-K.

Issuance of Common Stock and Warrants

Securities Purchase Agreements

On April 8, 2021, PAR Technology entered into Securities Purchase Agreements (collectively, the "Purchase Agreements") with each of PAR Act III, LLC ("Act III"), and certain funds and accounts advised by T. Rowe Price Associates, Inc., acting as investment adviser (such funds and accounts being collectively referred to herein as "TRP" and, collectively with Act III, the "investors"), to raise approximately $160.0 million through a private placement (the "Private Placement") of PAR Technology common stock. Pursuant to the Purchase Agreements, PAR Technology issued and sold (i) 73,530 shares of its common stock to Act III for a gross purchase price of approximately $5.0 million ($68.00 per share), and (ii) 2,279,412 shares of common stock to TRP for a gross purchase price of approximately $155.0 million ($68.00 per share) for an aggregate of 2,352,942 shares (the "Purchased Shares"). PAR Technology also issued to Act III a warrant to purchase 500,000 shares of common stock with an exercise price of $76.50 per share (the "Warrant"). The shares and the Warrant were issued in reliance on an exemption from registration under the Securities Act pursuant to Section 4(a)(2) thereof.

PAR Technology used the proceeds from the sale of the Purchased Shares to fund a portion of the Cash Consideration in the Merger.

The Purchase Agreements each contain customary representations, warranties, and covenants of PAR Technology and the investors.

Registration Rights Agreements

On April 8, 2021, PAR Technology entered into separate Registration Rights Agreements (each, a "Registration Rights Agreement" and collectively, the "Registration Rights Agreements") with each of Act III and TRP, pursuant to which, among other things, PAR Technology granted the investors certain registration rights. Under the Registration Rights Agreements, PAR Technology will be required to use its reasonable best efforts to cause the registration of the Purchased Shares of each investor and, with respect to Act III, the shares of common stock issuable upon exercise of the Warrant.

Investor Rights Agreement

On April 8, 2021, PAR Technology entered into an Investor Rights Agreement (the "IRA") with Act III pursuant to which Act III has certain rights and obligations, including the following:

Board Appointment. Act III has the right to designate one member (the "Act III Director") to the Board of Directors of PAR Technology (the "Board") who was appointed at the closing of the sale of the Purchased Shares. The Board has agreed, subject to the Act III Director's satisfaction of the independence requirements of the New York Stock Exchange listing standards, to nominate the Act III Director for reelection at its 2021 annual meeting of stockholders (the "2021 Stockholders Meeting").

Board Observers. In the event the Act III Director is not elected to the Board at the 2021 Stockholders Meeting, Act III will have the right to designate one person (the "Primary Observer") to serve as an observer at meetings of the Board. In addition, Act III has the right to designate one additional person (the "Voluntary Observer" and, together with the Primary Observer, the "Observers") to serve as an observer of the Board. Act III's right to designate the Primary Observer terminates upon the date of PAR Technology's 2022 annual meeting of stockholders. Act III's right to designate the Voluntary Observer terminates upon the one-year anniversary of the date of the IRA, but, if PAR Technology and Act III mutually agree, the Voluntary Observer may continue beyond the initial one-year period until such time as PAR Technology and Act III mutually agree.

Standstill. Until the earlier of the second anniversary of the date of the IRA, or at such time as Act III no longer has the right to designate the Act III Director or any Observers, subject to certain customary exceptions, Act III is prohibited from, among other things, (i) effecting a tender offer, merger or acquisition of PAR Technology, (ii) soliciting proxies or seeking a director/management change in PAR Technology, and (iii) acquiring securities, assets or indebtedness of PAR Technology in connection with any of the actions described in clauses (i) and (ii) above.

Preemptive Rights. Until the 18-month anniversary of the date of the IRA, if PAR Technology intends to issue new equity securities for cash to any person, then Act III has the right to participate in such equity offering, subject to exceptions with respect to certain excluded issuances.

Access to Information. For so long as there is an Act III Director or any Observer on the Board and subject to certain confidentiality obligations, Act III will be entitled to periodic meetings with senior management of PAR Technology and reasonably requested information.

Warrant

Concurrently with the sale of the Purchased Shares, PAR Technology issued the Warrant to Act III. Under the terms of the Warrant and subject to customary adjustments, the holder will have the right to purchase up to 500,000 shares of common stock (the "Warrant Shares") at a purchase price of $76.50 per share; provided, that, in the case that the number of Warrant Shares, the Purchased Shares and the shares issued in connection with the Merger, in the aggregate, is more than 19.9% of the number of shares of common stock outstanding immediately prior to the closing of the sale of the Purchased Shares (the "Conversion Cap"), the Warrant may not be exercised for any Warrant Shares that are in excess of the Conversion Cap (rounded up to the nearest whole share) (the "Excess Warrant Shares") until PAR Technology receives approval by its stockholders for the issuance of the Excess Warrant Shares. PAR Technology intends to seek stockholder approval for the issuance of Excess Warrant Shares at its 2021 Stockholders Meeting. In the event such stockholder approval is not obtained at the 2021 Stockholders Meeting or, if prior to the 2021 Stockholders Meeting, PAR Technology announces a change of control event, the Excess Warrant Shares may be exercised for a cash payment in accordance with the terms of the Warrant. The Warrant expires five years following issuance.

The foregoing descriptions of the transactions contemplated by the Purchase Agreements, Registration Rights Agreements, IRA and Warrant do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the Purchase Agreements, attached hereto as Exhibits 10.2 and 10.3; the Registration Rights Agreements, attached hereto as Exhibits 10.4 and 10.5; the IRA, attached hereto as Exhibit 10.6; and the Warrant, attached hereto as Exhibit 10.7 and are incorporated into this Current Report on Form 8-K.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth in Item 1.01 (including the descriptions of the Merger and the Merger Agreement therein) is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 (including the descriptions of the Credit Facility therein) is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The issuance of shares of PAR Technology common stock in consideration of the Punchh common stock and the Punchh warrants, pursuant to the Merger Agreement, are being made in reliance on an exemption from registration under the Securities Act pursuant to Section 4(a)(2) thereof.

The issuance of the Purchased Shares and the Warrant (including the Warrant Shares) are being made in reliance on an exemption from registration under the Securities Act pursuant to Section 4(a)(2) thereof. The information set forth in Item 1.01 (including the descriptions of the Merger, the Merger Agreement, the Private Placement, the Purchase Agreements and the Warrant therein) is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On April 5, 2021, the Board of PAR Technology, upon the recommendation of its Nominating and Corporate Governance Committee, determined to increase the size of the Board from five (5) to six (6) Directors, effective as of the closing of the sale of the Purchased Shares, and, pursuant to the terms of the IRA, immediately thereafter appointed Keith E. Pascal, the Act III Director, as a Director of PAR Technology. Pursuant to the terms of the IRA, subject to Act III's continued designation of Mr. Pascal as the Act III Director and his satisfaction of the independence requirements of the New York Stock Exchange listing standards, the Company will nominate Mr. Pascal for reelection at its 2021 Stockholders Meeting. Committee assignments for Mr. Pascal will be determined at a later date. Mr. Pascal will be eligible to receive compensation for his Board and committee service consistent with that provided to all non-employee directors as generally described in PAR Technology's definitive proxy statement for the 2020 annual meeting of stockholders filed with the SEC on April 21, 2020.

Mr. Pascal has not been a participant in any related person transactions required to be disclosed under Item 404(a) of Regulation S-K.

Item 7.01 Regulation FD Disclosure.

On April 8, 2021, PAR Technology issued a press release announcing completion of the Merger. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

The financial statements required by this item are not being filed herewith. They will be filed with the SEC by amendment as soon as practicable, but not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

The pro forma financial information required by this item is not being filed herewith. It will be filed with the SEC by amendment as soon as practicable, but not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

Exhibit No.	Exhibit Description
2.1*	Agreement and Plan of Merger, dated April 8, 2021, by and among PAR Technology Corporation, ParTech, Inc., Sliver Merger Sub Inc., Punchh Inc. and Fortis Advisors LLC.
10.1	Credit Agreement, dated April 8, 2021, by and among PAR Technology Corporation, its subsidiaries party thereto as guarantors and Owl Rock First Lien Master Fund, L.P., as administrative agent.
10.2*	Securities Purchase Agreement, dated April 8, 2021, between PAR Technology Corporation and PAR Act III, LLC.
10.3*	Securities Purchase Agreement, dated April 8, 2021, among PAR Technology Corporation and certain funds and accounts advised by T. Rowe Price Associates, Inc., acting as investment adviser.
10.4	Registration Rights Agreement, dated April 8, 2021, between PAR Technology Corporation and PAR Act III, LLC.
10.5	Registration Rights Agreement, dated April 8, 2021, among PAR Technology Corporation and certain funds and accounts advised by T. Rowe Price Associates, Inc., acting as investment adviser.
10.6	Investor Rights Agreement, dated April 8, 2021, between PAR Technology Corporation and PAR Act III, LLC.
10.7	Common Stock Purchase Warrant, dated April 8, 2021, in favor of PAR Act III, LLC.
99.1**	PAR Technology Corporation Press Release dated April 8, 2021.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* The schedules and exhibits to such agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K.

** The information in Item 7.01 and Exhibit 99.1 of this Current Report on Form 8-K shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Exchange Act, except as expressly set forth by specific reference in such a filing.

Forward-Looking Statements.

This Current Report on Form 8-K contains "forward-looking statements" within the meaning of Section 21E of the Exchange Act, Section 27A of the Securities Act and the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not historical in nature, but rather are predictive of PAR Technology's future operations, financial condition, business strategies and prospects. Forward-looking statements are generally identified by words such as "anticipate", "believe," "belief," "continue," "could," "expect," "estimate," "intend," "may," "opportunity," "plan," "should," "will," "would," "will likely result," and similar expressions. Forward-looking statements are based on current expectations and assumptions as to future occurrences and trends, including statements expressing optimism or pessimism about future operating results or events and projected sales, earnings, capital expenditures and business strategies, that are subject to risks and uncertainties, which could cause actual results to differ materially from those expressed in, or implied by, the forward-looking statements, including potential business uncertainties relating to the Merger, disruptions to PAR Technology's business and operational relationships, PAR Technology's ability to achieve anticipated synergies, and the anticipated costs, timing and complexity of integration. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in

PAR Technology's Annual Report on Form 10-K for the year ended December 31, 2020 and PAR Technology's other filings with the SEC. PAR Technology undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise, except as may be required under applicable securities law.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

PAR TECHNOLOGY CORPORATION
(Registrant)

Date: April 8, 2021

/s/Bryan A. Menar
Bryan A. Menar
Chief Financial and Accounting Officer
(Principal Financial Officer)

Exhibit 2.1

Execution Version

AGREEMENT AND PLAN OF MERGER

among

PAR TECHNOLOGY CORPORATION,

PARTECH, INC.,

SLIVER MERGER SUB, INC.,

PUNCHH INC.

and

FORTIS ADVISORS LLC

Dated as of April 8, 2021

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of April 8, 2021 (the "Agreement Date"), is between PAR Technology Corporation, a Delaware corporation ("Parent"), ParTech, Inc., a New York corporation (the "Acquiror"), Sliver Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of the Acquiror ("Sub"), Punchh Inc., a Delaware corporation (the "Company") and Fortis Advisors LLC, a Delaware limited liability company, solely in its capacity as the initial Stockholder Representative hereunder.

RECITALS

A. The Boards of Directors of each of the Acquiror, the Company and Sub have (i) determined that this Agreement and the transactions contemplated thereby including the merger of Sub with and into the Company (the "Merger") are advisable and fair to, and in the best interests of, their respective stockholders, (ii) approved, adopted and declared advisable this Agreement and the Merger upon the terms and subject to the conditions set forth in this Agreement pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), (iii) directed that the adoption of this Agreement be submitted to their respective stockholders and (iv) recommended the adoption of this Agreement and the approval of the Merger by their respective stockholders.

B. As promptly as practicable following the execution and delivery of this Agreement, it is expected that the holders of at least 82% (calculated on an as-converted to Company Common Stock basis) of the issued and outstanding (i) shares of common stock, par value $0.0001 per share, of the Company (the "Company Common Stock"), (ii) shares of the Company Preferred Stock, (iii) Vested Options and (iv) In-the-Money Warrants (collectively, the "Requisite Holders" (provided, that the Stockholders included in the Requisite Holders will include the holders of (a) at least a majority of the outstanding shares of Company Common Stock and (b) at least a majority of the outstanding shares of Company Preferred Stock)) will deliver the Stockholder Consent and Agreement.

C. WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent and the Acquiror to enter into this Agreement, certain key employees have entered into restrictive covenant agreements (the "Restrictive Covenant Agreements"), in substantially the form attached hereto as Exhibit H, the effectiveness of which is conditioned upon the Closing.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

"Accredited Investor" means an "accredited investor" as defined in Rule 501 promulgated under the rules and regulations of the Securities Exchange Act of 1934, as amended.

"Action" means any claim, action, suit, inquiry, proceeding, audit or investigation by or before any Governmental Authority, or any other arbitration, mediation or similar proceeding.

"Additional Consideration" means the aggregate amount of cash, if any, payable to the Stockholders, holders of Vested Options and holders of In-the-Money Warrants by the Acquiror as the Net Adjustment Amount pursuant to Section 2.14(f)(ii)(B).

"Additional Per Share Consideration" means an amount, if any, equal to the quotient of (i) the Additional Consideration divided by (ii) the number of Fully Diluted Common Shares.

"Adjustment Escrow Amount" means $1,700,000.

"Adjustment Escrow Fund" means the Adjustment Escrow Amount deposited with the Escrow Agent, as such amount may be increased or decreased as provided in the Escrow Agreement, including any remaining interest or other amounts earned thereon.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated, unitary or similar group defined under state, local or foreign Law).

"Aggregate In-the-Money Warrant Exercise Price" means the aggregate cash exercise prices payable upon the exercise in full of all In-the-Money Warrants outstanding as of immediately prior to the Effective Time.

"Aggregate Share Consideration Value" means $110,000,000.

"Aggregate Vested Option Exercise Price" means the aggregate cash exercise prices payable upon the exercise in full of all Vested Options outstanding as of immediately prior to the Effective Time.

"Ancillary Agreements" means the Stockholder Consent and Agreement, the Escrow Agreement, the Letters of Transmittal, the Investor Questionnaires, the Restrictive Covenant Agreements, the Letter of Undertaking and the certificated delivered pursuant to Section 2.12(b)(v).

"Applicable Accounting Principles" means GAAP applied on a basis consistent with the preparation of the Balance Sheet; provided, that in the event of a conflict between GAAP and consistent application thereof, GAAP shall prevail and such calculations shall be subject to such differences in accounting principles, policies and procedures as are set forth on Schedule 1.1(b) of the Disclosure Schedules.

"Beneficially Own" means, with respect to any securities, having "beneficial ownership" for purposes of Rule 13d-3 or 13d-5 under the Exchange Act as in effect on the date hereof. Similar terms such as "Beneficial Ownership" and "Beneficial Owner" have the corresponding meanings.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in The City of New York.

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (116th Cong.) Mar. 27, 2020), the Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020, IRS Notice 2020-65 and any related or successor legislation, guidance, rules and regulations promulgated thereunder relating to COVID-19.

"Cash" means, as at a specified date, the aggregate amount of all cash and cash equivalents of the Company and its Subsidiaries required to be reflected as cash and cash equivalents on a consolidated balance sheet of the Company and its Subsidiaries as of such date prepared in accordance with GAAP, net of (i) any outstanding checks, wires and bank overdrafts of the Company or its Subsidiaries and (ii) any amounts relating to Restricted Cash, in the case of each of clauses (i) and (ii), whether or not required to be reported as such under GAAP.

"Cash Percentage" means the Closing Date Per Share Cash Consideration divided by the Closing Date Per Share Consideration Cash Value (represented as a percentage).

"Closing Date Cash Consideration" means (i) $390,000,000, plus (ii) the Estimated Cash, plus (iii) the Estimated Working Capital Overage, if any, plus (iv) the Aggregate Vested Option Exercise Price, plus (v) the Aggregate In-the-Money Warrant Exercise Price, plus (vi) the Employee Loan Amount minus (vii) the Estimated Indebtedness, minus (viii) the Estimated Working Capital Underage, if any, minus (ix) the Estimated Transaction Expenses.

"Closing Date Consideration" means (i) the Closing Date Cash Consideration, plus (ii) the Share Consideration.

"Closing Date Per Share Cash Consideration" means an amount, if any, set forth on the Merger Consideration Schedule equal to the quotient of (i) the Closing Date Cash Consideration, divided by (ii) the number of Fully Diluted Common Shares.

"Closing Date Per Share Consideration" means the Closing Date Per Share Cash Consideration, plus the Closing Date Per Share Equity Consideration.

"Closing Date Per Share Consideration Cash Value" means (i) the Closing Date Per Share Cash Consideration plus (ii)(A) the Closing Date Per Share Equity Consideration multiplied by (B) the Parent Share Value.

"Closing Date Per Share Equity Consideration" means an amount of the Share Consideration set forth on the Merger Consideration Schedule equal to the quotient of (i) the Share Consideration, divided by (ii) the number of Fully Diluted Common Shares.

"Closing Working Capital Overage" shall mean the amount, if any, by which the Closing Net Working Capital is greater than Target Net Working Capital. If the Closing Net Working Capital is equal to or lower than Target Net Working Capital, then Closing Working Capital Overage shall be zero.

"Closing Working Capital Underage" shall mean the amount, if any, by which the Closing Net Working Capital is less than Target Net Working Capital. If the Closing Net Working Capital is equal to or greater than Target Net Working Capital, then Closing Working Capital Underage shall be zero.

"Company Charter" means the Restated Certificate of Incorporation of the Company, as amended from time to time.

"Company Option" means each outstanding option or right to purchase Shares issued under the Company Option Plans.

"Company Option Plans" means the Punchh Inc. 2010 Equity Incentive Plan and Punchh Inc. 2020 Equity Incentive Plan.

"Company Preferred Stock" means, collectively, the Series A Preferred Stock, the Series A-1 Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

"Company Products" means all products, services and Technology offerings (including Website, mobile and tablet applications, and customer and end user interfaces) owned, marketed, distributed, licensed or sold by the Company.

"Company Warrants" means warrants to purchase Shares of Company Common Stock that are outstanding immediately prior to the Effective Time.

"Contract" means any binding contract, agreement, arrangement or understanding, whether written or oral and whether express or implied.

"control," including the terms "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

"COVID-19" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associate epidemics, pandemic or disease outbreaks.

"COVID-19 Financial Assistance Program" means any financial assistance program implemented by any Governmental Authority in connection with or in response to COVID-19 (including, for the avoidance of doubt, the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof), including the Families First Act, the CARES Act and the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020) and subsequent guidance issued in respect thereof, and any other similar or additional federal, state, local, or non-U.S. Law, or administrative guidance intended to benefit taxpayers in response to COVID-19 and the associated economic downturn.

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester or any other Law, order, directive, guideline or recommendation by any Governmental Authority or public health agency in connection with or in response to COVID-19, including, but not limited to, the CARES Act, the Occupational Safety and Health Administration and the Center for Disease Control and Prevention guidelines and requirements, such as social distancing, cleaning, and other similar or related measures.

"Dissenting Shares Amount" means (a) the aggregate number of Dissenting Shares that are Company Common Stock multiplied by (b) the Closing Date Per Share Cash Consideration.

"Employee Loan Amount" means the principal and interest outstanding under that certain Secured Partial Recourse Promissory Note by and between the Company and Shyam Rao, as amended from time to time.

"Encumbrance" means any charge, claim, limitation, condition, equitable interest, mortgage, lien, option, pledge, security interest, easement, encroachment, right of first refusal, adverse claim or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"Environmental Laws" means all Laws relating to pollution or protection of the environment, exposure of any individual to Hazardous Materials, and Laws which prohibit, regulate or control any Hazardous Material, including Laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, registration, distribution, labeling, sale, or the exposure of others to, recycling, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or any product containing any Hazardous Material, and including related electronic waste, product content or product take-back requirements.

"ERISA Affiliate" means any trade or business, whether or not incorporated, under common control with the Company or any of its Subsidiaries and that, together with the Company or any of its Subsidiaries, is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Escrow Agent" means Citibank, N.A., or its successor under the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement to be entered into by the Acquiror, the Stockholder Representative and the Escrow Agent, substantially in the form attached as Exhibit C hereto.

"Estimated Working Capital Overage" shall mean the amount, if any, by which the Estimated Net Working Capital is greater than Target Net Working Capital. If the Estimated Net Working Capital is equal to or lower than Target Net Working Capital, then Estimated Working Capital Overage shall be zero.

"Estimated Working Capital Underage" shall mean the amount, if any, by which the Estimated Net Working Capital is less than Target Net Working Capital. If the Estimated Net Working Capital is equal to or greater than Net Working Capital, then Estimated Working Capital Underage shall be zero.

"Exchange Ratio" shall mean a fraction (i) the numerator of which shall be the Closing Date Per Share Consideration Cash Value, and (ii) the denominator of which shall be the Parent Share Value.

"Fraud" means common law fraud under Delaware law committed by a Person making a representation or warranty contained in this Agreement or the Ancillary Agreements with the intent to deceive; provided, that (a) at the time of the applicable misrepresentation or omission, the Person making such misrepresentation or omission had knowledge of the inaccuracy of such misrepresentation or omission and (b) the Person to whom the representation or omission was made acted in reliance on such misrepresentation or omission and suffered financial injury as a result of such inaccuracy.

"Fully Diluted Common Shares" means (i) the aggregate number of Shares of Company Common Stock (other than Treasury Shares, but including Shares of Company Common Stock issued in connection with the Preferred Stock Conversion) outstanding as of immediately prior to the Effective Time, plus (ii) the aggregate number of Shares of Company Common Stock issuable upon the exercise of all Vested Options and In-the-Money Warrants as of immediately prior to the Effective Time.

"Fund Transferee" means, if the Stockholder is a partnership, corporation or limited liability company, its partners, stockholders or members.

"GAAP" means United States generally accepted accounting principles and practices as in effect on the date hereof.

"Governmental Authority" means any United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury).

"Hazardous Materials" means any material, emission, or substance that has been designated by a Governmental Authority to be a pollutant, contaminant, hazardous, toxic, radioactive or biological waste, or otherwise a danger to health, reproduction or the environment, including asbestos-containing materials, mold, and petroleum and petroleum products or any fraction thereof.

"In-the-Money Option" means a Company Option having a per Share exercise price or purchase price less than an amount equal to (x) the Closing Date Per Share Cash Consideration plus (y) the value of the Closing Date Per Share Equity Consideration (based on the Parent Share Value).

"In-the-Money Warrant" means a Company Warrant that has an exercise price below an amount equal to (x) the Closing Date Per Share Cash Consideration plus (y) the value of the Closing Date Per Share Equity Consideration (based on the Parent Share Value).

"Indebtedness" means, without duplication (but before taking account the consummation of the transactions contemplated hereby), (i) the unpaid principal amount of, accrued interest, premiums, penalties and other fees, expenses (if any), and other payment obligations and amounts due (including such amounts that would become due as a result of the consummation of the transactions contemplated by this Agreement) that would be required to be paid by a borrower to a lender pursuant to a customary payoff letter, in each case, in respect of (A) all indebtedness for borrowed money of the Company and its Subsidiaries (including any PPP Loan), (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments, and (C) all obligations with respect to interest-rate hedging, swaps or similar financial arrangements (valued at the termination value thereof and net of all payments owed to the Company or its Affiliates thereunder); (ii) all obligations under finance leases with respect to which the Company or any of its Subsidiaries is liable, determined on a consolidated basis in accordance with GAAP (excluding obligations under leases for Leased Real Property entered into in the ordinary course of business); (iii) any amounts for the deferred purchase price of goods and services, including any earn out liabilities associated with past acquisitions (excluding deferred revenue); (iv) all liabilities with respect to any vested and accrued but unpaid bonuses for the prior fiscal year, and any severance, termination payments, earned and unpaid commissions or deferred compensation payable prior to, or due to any terminations prior to the Effective Time (to the extent not otherwise taken into account in the calculation of Net Working Capital) with respect to any current or former employee, officer or director of the Company or any of its Subsidiaries, and any employment Taxes payable by the Company or any of its Subsidiaries with respect to the foregoing, in each case, to the extent not otherwise taken into account in the calculation of Closing Net Working Capital as finally determined pursuant to Section 2.14; (v) unpaid management fees; (vi) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by the Company or any of its Subsidiaries; (vii) all unpaid Pre-Closing Taxes excluding any sales and use Tax and other similar Tax liabilities; (viii) any "applicable employment taxes" (as defined in Section 2302(d)(1) of the CARES Act) that the Company or any of its Subsidiaries has elected to defer pursuant to Section 2302 of the CARES Act or other applicable Law, to the extent not included in the calculation of Closing Net Working Capital as finally determined pursuant to Section 2.14; (ix) all obligations of the type referred to in clauses (i) through (viii) of other Persons for the payment of which the Company or any of its Subsidiaries is responsible or liable, as obligor, guarantor, surety or otherwise, including any guarantee of such obligations; and (x) the items set forth Schedule 1.1(c) of the Disclosure Schedules. For the avoidance of doubt, Indebtedness shall exclude any Transaction Expenses.

"Indemnified Taxes" means, without duplication and to the extent not otherwise taken into account in the calculation of Closing Indebtedness or Closing Net Working Capital as finally determined pursuant to Section 2.14, (i) all Pre-Closing Taxes, (ii) any and all Taxes of any Affiliated Group of which the Company or the Subsidiaries is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any analogous or similar state, local, or foreign Law, (iii) reasonable out-of-pocket and third-party costs and expenses associated with preparing and filing any Tax Return of the Companies and the Subsidiaries with respect to any Pre-Closing Tax Period (and such costs and expenses of any Tax Return allocable to the portion of any Straddle Period ending on or before the Closing Date), and (iv) any amount that would have been described in clauses (i) – (iv) of this definition but for the provisions of any COVID-19 Financial Assistance Program and any overpayment or deemed overpayment of subsidies or other amounts pursuant to any COVID-19 Financial Assistance Program. Notwithstanding the foregoing, "Indemnified Taxes" shall exclude any sales and use Tax and other similar Tax liabilities.

"Indemnity Escrow Amount" means $2,500,000.

"Indemnity Escrow Fund" means the Indemnity Escrow Amount deposited with the Escrow Agent, as such sum may be increased or decreased as provided in the Escrow Agreement, including any remaining interest or other amounts earned thereon.

"Indemnity Pro Rata Share" means, with respect to each Seller Indemnifying Party, a fraction, the numerator of which is the sum of the aggregate amount of cash, shares of Parent Common Stock (each valued at the Parent Effective Date Share Value) and Converted Vested Options (each valued at the Parent Effective Date Share Value minus the applicable exercise price for such Converted Vested Option after such conversion) that such Seller Indemnifying Party is entitled to be paid or issued pursuant to Section 2.7, Section 2.9(a) and Section 2.10 and the denominator of which is the aggregate amount of cash, shares of Parent Common Stock (each valued at the Parent Effective Date Share Value) and Converted Vested Options (each valued at the Parent Closing Share Value minus the applicable exercise price for such Converted Vested Option after such conversion) that all Seller Indemnifying Parties are entitled to be paid or issued pursuant to Section 2.7, Section 2.9(a) and Section 2.10 as set forth in the Merger Consideration Schedule.

"Intellectual Property" means all intellectual property rights arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: (i) trade names, trademarks and service marks (registered and unregistered), domain names and other Internet addresses or identifiers, social media accounts, social media handles, trade dress and similar rights, and applications (including intent to use applications and similar reservations of marks and all goodwill associated therewith) to register any of the foregoing (collectively, "Marks"); (ii) patents and patent applications (collectively, "Patents"); (iii) copyrights, works of authorship, copyrightable works, copyright registrations and applications therefor (collectively, "Copyrights"); (iv) trade secrets, know-how, inventions, methods, processes and processing instructions, technical data, specifications, research and development information, Technology, product roadmaps, business plans, customer lists and any other information, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use, excluding any Copyrights or Patents that may cover or protect any of the foregoing (collectively, "Trade Secrets"); and (v) moral rights, publicity rights, data base rights and any other proprietary or intellectual property rights of any kind or nature that do not comprise or are not protected by Marks, Patents, Copyrights or Trade Secrets.

"knowledge," with respect to the Company, means the knowledge of the Persons listed on Schedule 1.1(a) of the Disclosure Schedules, and such knowledge as would be imputed to such Persons upon reasonable due inquiry.

"Law" means any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or order of any Governmental Authority.

"Leased Real Property" means all real property leased, subleased or licensed to the Company or any of its Subsidiaries or which the Company or any of its Subsidiaries otherwise has a right or option to use or occupy, together with all structures, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

"Material Adverse Effect" means any event, change, circumstance, occurrence, effect, result or state of facts that, individually or in the aggregate, is or would reasonably be expected to be materially adverse to the business, assets, liabilities, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole.

"Merger Consideration" means (i) the Closing Date Consideration, plus (ii) any Additional Consideration.

"Net Working Capital" means, as at a specified date and without duplication, an amount (which may be positive or negative) equal to (i) the consolidated current assets of the Company and its Subsidiaries, minus (ii) the consolidated current liabilities of the Company and its Subsidiaries, in each case before taking into account the consummation of the transactions contemplated hereby, and calculated in accordance with the Applicable Accounting Principles and the example calculation set forth on Schedule 1.1(d) of the Disclosure Schedules (including the "diligence adjustments" included therein); provided, however, for the avoidance of doubt, Net Working Capital shall exclude (x) any amounts relating to or included in Cash, Indebtedness, Transaction Expenses or Taxes (including current or deferred) to the extent such amounts are reflected in the calculation of the Merger Consideration (to avoid any double-counting with any other adjustments), (y) any deferred revenue and (z) any accounts receivable associated with deferred revenue for subscription services.

"Out-of-the-Money Warrant" means a Company Warrant that is not an In-the-Money Warrant as of immediately prior to the Effective Time.

"Owned Real Property" means all real property owned by the Company or any of its Subsidiaries, together with all structures, facilities, fixtures, systems, improvements and items of property previously or hereafter located thereon, or attached or appurtenant thereto, and all easements, rights and appurtenances relating to the foregoing.

"Parent Common Stock" means the common stock, $0.02 par value per share, of Parent.

"Parent Closing Share Value" means $62.32.

"Parent Effective Date Share Value" means the trading price of one share of Parent Common Stock measured as of the close of the trading day immediately preceding the date that the initial Form S-3 becomes effective.

"Parent Share Value" means $69.00.

"Permitted Transfer" means a transfer to (i) an Affiliate of a Stockholder or holder of In-the-Money Warrants, (ii) if the Stockholder or holder of In-the-Money Warrants is an individual, to an immediate family member or trust for the benefit of such Stockholder or holder of In-the-Money Warrant or one or more of such holders' immediate family members, (iii) pursuant to the laws of testamentary or intestate succession or otherwise involuntarily transferred by operation of law or (iv) to a Fund Transferee, in each case, to the extent such Person has delivered to Parent an Investor Questionnaire and executed an undertaking with Parent agreeing to be bound by Section 5.3 (and any such transferee of shares is referred to as a "Permitted Transferee").

"Person" means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

"Potential 280G Benefits" means any potential payments or benefits that may be made or provided to any Person who, with respect to the Company, is or may reasonably be determined to be a "disqualified individual" (as such term is defined in Section 280G of the Code) in connection with the transactions contemplated by this Agreement which could constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code).

"PPP Loan" means the loan disbursed to the Company in connection with the "Paycheck Protection Program," as established by section 1102 of the CARES Act, pursuant to that certain U.S. Small Business Administration Paycheck Protection Program Note dated as of April 22, 2020 made by the Company in favor of Silicon Valley Bank in the principal amount of $3,314,627.

"Pre-Closing Tax Period" means all taxable periods ending on or before the Closing Date.

"Pre-Closing Taxes" means, without duplication, (i) all Taxes (or the non-payment thereof) of, or imposed on, the Company or any of its Subsidiaries for each Pre-Closing Tax Period and the portion through the end of the Closing Date for any Straddle Period, including any Taxes arising by reason of Code Section 965 regardless of whether an election under Code Section 965(h) has been made, (ii) all Taxes of any member of an Affiliated Group of which the Company or any of its Subsidiaries (or any predecessor of any of the foregoing) is or was a member on or before the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any analogous or similar U.S. state or local, or non-U.S. Law and (iii) any deferral of payroll tax.

"Pro Rata Share" means, with respect to each Seller Indemnifying Party, a fraction, the numerator of which is the sum of the aggregate amount of cash, Parent Common Stock (valued at the Parent Closing Share Value) and Converted Vested Options (each valued at the Parent Closing Share Value minus the applicable exercise price for such Converted Vested Option after such conversion) that such Seller Indemnifying Party is entitled to be paid or issued pursuant to Section 2.7, Section 2.9(a) and Section 2.10 and the denominator of which is the aggregate amount of cash, Parent Common Stock (valued at the Parent Closing Share Value) and Converted Vested Options (each valued at the Parent Closing Share Value minus the applicable exercise price for such Converted Vested Option after such conversion) that all Seller Indemnifying Parties are entitled to be paid or issued pursuant to Section 2.7, Section 2.9(a) and Section 2.10 as set forth in the Merger Consideration Schedule.

"R&W Insurance Policy" means that certain representation and warranty insurance policy issued by XL Insurance America, Inc. (and any excess policies related thereto) with respect to the representations and warranties of the Company under this Agreement purchased by the Acquiror in connection with the execution and delivery of this Agreement, as amended, supplemented or replaced.

"R&W Insurance Policy Cost" means the premium amount, excess commission payments and any other costs, fees or expenses (including surplus taxes, underwriting fees and fees of the broker, but excluding fees of Parent counsel) of or payable in connection with the R&W Insurance Policy.

"Registrable Securities" means the Share Consideration (and any securities issued in exchange or upon conversion of the Share Consideration, and any securities issued or issuable with respect to any securities described in this definition above by way of a dividend or stock split or in connection with a combination of stock, recapitalization, merger, consolidation or other reorganization); provided, however, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities when (i) a Stockholder ceases to hold such securities, (ii) a Form S-3 covering the resale of such securities has been declared effective by the SEC and such securities have been disposed of pursuant to such effective Form S-3, (iii) such securities shall be eligible to be transferred by a Stockholder pursuant to Rule 144 (or any successor provision) under the Securities Act without any time or volume limitations, or (iv) such securities cease to be outstanding.

"Related Party," with respect to any specified Person, means: (i) any Affiliate of such specified Person, or any director, executive officer, general partner or managing member of such Affiliate; (ii) any Person who serves or within the past three years has served as a director, executive officer, partner, member or in a similar capacity of such specified Person; (iii) any immediate family member of a Person described in clause (ii); or (iv) any other Person who holds, individually or together with any Affiliate of such other Person and any member(s) of such Person's immediate family, more than 5% of the outstanding equity or ownership interests of such specified Person. Notwithstanding the foregoing, no non-controlled portfolio company of a venture capital fund that is a Stockholder of the Company shall be a Related Party.

"Representatives" means, with respect to any Person, the officers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

"Restricted Cash" means all Cash and Cash equivalents that are not freely useable and available to the Company because it is subject to restrictions or limitations on use or distribution either by contract, for regulatory or legal purposes, or is cash and cash equivalents that is collected from customers in advance, is being held on behalf of customers and represents a liability to such customers (excluding in all cases cash associated with deferred revenue, which shall not be considered Restricted Cash); provided, that Restricted Cash shall exclude up to $500,000 to the extent that such Cash and Cash equivalents are either (i) held in the form of deposits with landlords or (ii) held as restricted cash with respect to any Leased Real Property, in each case, in the ordinary course of business.

"Retention" means the retention amount under the R&W Insurance Policy.

"Series A Preferred Stock" means the Series A Preferred Stock, par value $0.0001 per share, of the Company.

"Series A-1 Preferred Stock" means the Series A-1 Preferred Stock, par value $0.0001 per share, of the Company.

"Series B Preferred Stock" means the Series B Preferred Stock, par value $0.0001 per share, of the Company.

"Series C Preferred Stock" means the Series C Preferred Stock, par value $0.0001 per share, of the Company.

"Share Consideration" means a number of shares rounded up to the nearest whole number of the Parent Common Stock equal to (x) the Aggregate Share Consideration Value divided by (y) the Parent Share Value.

"Shares" means the shares of Company Common Stock and Company Preferred Stock.

"Software" means any and all computer programs, software (in object and source code), firmware, middleware, applications, API's, web widgets, code and related algorithms, models and methodologies, files, documentation and all other tangible embodiments thereof.

"Special Indemnity Escrow Amount" means $1,750,000.

"Special Indemnity Escrow Fund" means the Special Indemnity Escrow Amount deposited with the Escrow Agent, including any remaining interest or other amounts earned thereon.

"Stock Percentage" means (i)(A) the Closing Date Per Share Equity Consideration multiplied by (B) the Parent Share Value divided by (ii) the Closing Date Per Share Consideration Cash Value (represented as a percentage).

"Stockholder Consent and Agreement" means a written consent and agreement, which shall constitute the affirmative vote of Stockholders (i) representing a majority of the outstanding Shares and (ii) representing a majority of the outstanding shares of Company Preferred Stock, voting as a separate class, approving and adopting this Agreement and the Merger in accordance with Sections 228 and 251 of the DGCL and, pursuant to which the required holders of Shares of the Company Preferred Stock under the Company Charter will irrevocably elect to convert all Shares of Company Preferred Stock into Company Common Stock effective as of immediately prior to the Effective Time in accordance with the Company Charter (the "Preferred Stock Conversion") in the form attached as Exhibit A hereto.

"Stockholder Representative Holdback Amount" means $500,000.

"Straddle Period" means any taxable period that includes (but does not end on) the Closing Date.

"Subsidiary" means, with respect to any Person, any other Person of which at least 50% of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by such first Person.

"Systems" means servers, hardware systems, databases, circuits, networks and other computer and telecommunications assets and equipment.

"Target Net Working Capital" means negative $1,000,000.

"Tax Return" means any return, declaration, report, claim for refund, information report, return statement or filing relating to Taxes made with a Governmental Authority in connection with the collection or imposition of any Taxes, including any schedule or attachment thereto and including any amendment thereof, including any return, declaration, report or other statement provided or required to be provided to any Person for compliance with Code Sections 1471-1474 (including any intergovernmental agreements thereunder and any Treasury Regulations or other official interpretations with respect thereof).

"Taxes" means: (i) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, registration, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, abandoned and unclaimed property, customs, duties or other taxes, fees, assessments or charges in the nature of a tax (including any amounts resulting from the failure to file any Tax Return), together with any interest and any penalties, additions to tax or additional amounts with respect thereto; (ii) any liability for payment of amounts described in clause (i) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (iii) any liability for the payment of amounts described in clauses (i) or (ii) as a result of any tax sharing, tax receivable, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

"Technology" means any or all of the following: (i) works of authorship including computer programs, source code, and executable code, whether embodied in software, firmware or otherwise, architecture, documentation, designs, files, and records, (ii) inventions (whether or not patentable), discoveries, and improvements, (iii) proprietary and confidential information, trade secrets and know how, (iv) databases, data compilations and collections and technical data, (v) domain names, web addresses and Websites, (vi) tools, methods and processes, and (vii) any and all instantiations or embodiments of the foregoing in any form and embodied in any media.

"Transaction Expenses" means, without duplication of any amounts included in the definition of Closing Indebtedness as finally determined pursuant to Section 2.14, the aggregate amount of any and all unpaid fees and expenses incurred or payable by or on behalf of, or paid or to be paid directly by, the Company or any of its Subsidiaries or any Person that the Company or any of its Subsidiaries pays or reimburses or is otherwise legally obligated to pay or reimburse (including any such fees and expenses incurred by or on behalf of the Stockholders that are required to be paid by the Company or any of its Subsidiaries) in connection with the process of selling the Company or the negotiation, preparation or execution of this Agreement or the Ancillary Agreements (including any process run by or on behalf of the Company in connection with such transaction) or the performance or consummation of the transactions contemplated hereby or thereby, including, without duplication, in each case solely to the extent unpaid, (i) all fees and expenses of counsel, advisors, consultants, investment bankers, accountants, auditors and any other experts in connection with the transactions contemplated hereby; (ii) all brokers', finders' or similar fees in connection with the transactions contemplated hereby; (iii) any change of control payments, bonuses, severance, termination, or retention obligations or similar amounts payable in the future or due by the Company or any of its Subsidiaries in connection with the transactions contemplated hereby, including any Taxes payable in connection therewith (other than any "double trigger," contingent or similar amounts payable to any employee in connection with a subsequent termination or continued employment or engagement by the Company or one of its Subsidiaries (including the Surviving Corporation) of such employee after the Closing); (iv) 50% of the Transfer Taxes; (v) 50% of the R&W Insurance Policy Cost (provided, that this clause (v) shall not exceed $2,000,000); (vi) 50% of the filing fees paid by Parent or its Affiliates in connection with the filing of the application under the HSR Act in connection with the transactions contemplated by this Agreement; and (vii) the cost of the D&O Tail.

"Treasury Regulations" means the income tax regulations, including temporary regulations and, to the extent taxpayers are permitted to rely on them, proposed regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Unaccredited Investor" means any Stockholder, holder of Vested Options or holder of In-the-Money Warrants that is not an Accredited Investor.

"Unvested Option" means a Company Option that is not a Vested Option as of immediately prior to the Effective Time.

"Vested Cash-Out Options" means, with respect to any Vested Option, the portion of such Vested Option exercisable for a number of shares of Company Common Stock equal to (x) the aggregate number of shares of Company Common Stock for which such Vested Option is exercisable multiplied by (y) the Cash Percentage.

"Vested Option" means an In-the-Money Option that is vested as of immediately prior to the Effective Time (but after giving effect to any acceleration of vesting of such Company Option triggered by the transactions contemplated by this Agreement).

"Vested Rollover Options" means, with respect to any Vested Option, the portion of such Vested Option exercisable for a number of shares of Company Common Stock equal to (x) the aggregate number of shares of Company Common Stock for which such Vested Option is exercisable multiplied by (y) the Stock Percentage.

"Websites" means all Internet websites, owned, operated or hosted by or on behalf of the Company or any of its Subsidiaries.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

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Option Payment Amount	2.12(a)(iv)
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ARTICLE II
THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement, at the Effective Time and in accordance with the DGCL, Sub shall be merged with and into the Company pursuant to which (a) the separate corporate existence of Sub shall cease, (b) the Company shall be the surviving corporation in the Merger (thereinafter, the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of Delaware as a wholly owned Subsidiary of the Acquiror and (c) all of the properties, rights, privileges, powers and franchises of the Company will vest in the Surviving Corporation, and all of the debts, liabilities, obligations and duties of the Company will become the debts, liabilities, obligations and duties of the Surviving Corporation.

Section 2.2 Closing; Effective Time.

(a) The closing of the Merger (the "Closing") shall be held via electronic exchange of documents on the date hereof promptly following the delivery of the Stockholder Consent and Agreement executed by the Requisite Holders in accordance with Section 5.1, or at such other place or at such other time or on such other date as the parties mutually may agree in writing. The day on which the Closing actually takes place is referred to as the "Closing Date."

(b) As soon as practicable on the Closing Date, the parties shall cause a certificate of merger substantially in the form attached as Exhibit B hereto to be executed and filed with the Secretary of State of the State of Delaware (the "Certificate of Merger"), executed in accordance with the relevant provisions of the DGCL. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware or at such later time as the parties shall agree and as shall be specified in the Certificate of Merger. The date and time when the Merger shall become effective is herein referred to as the "Effective Time."

Section 2.3 Effects of the Merger. The Merger shall have the effects provided for in this Agreement and in the applicable provisions of the DGCL.

Section 2.4 Certificate of Incorporation and Bylaws.

(a) At the Effective Time, by virtue of the Merger, the certificate of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated so that it reads in its entirety as set forth in Exhibit D hereto, and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with its terms and as provided by applicable Law.

(b) At the Effective Time, the bylaws of the Company, as in effect immediately prior to the Effective Time, shall be amended so that they read in their entirety as set forth in Exhibit E hereto, and, as so amended and restated, shall be the bylaws of the Surviving Corporation until thereafter amended and restated in accordance with their terms, the certificate of incorporation of the Surviving Corporation and as provided by applicable Law.

Section 2.5 Directors; Officers. The parties to this Agreement shall take all actions necessary so that from and after the Effective Time, (a) the directors of Sub serving immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be and (b) the officers of Sub serving immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

Section 2.6 Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either the Company or Sub acquired or to be acquired by the Surviving Corporation as a result of or in connection with the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name of and on behalf of either the Company or Sub, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

Section 2.7 Conversion of Stock. At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, the Acquiror, Sub, the Company or any holder of any Shares or any shares of capital stock of Sub:

(a) Each Share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Cancelled Shares and any Dissenting Shares) shall be converted into the right to receive, at the times specified in this Agreement, (i) the Closing Date Per Share Consideration, plus (ii) (when and if payable) the Additional Per Share Consideration, in each case, without interest;

(b) Each Share that is owned by Parent, the Acquiror or Sub immediately prior to the Effective Time shall automatically be cancelled and shall cease to exist, and no cash or other consideration shall be delivered or deliverable in exchange therefor;

(c) Each Share that is held in the treasury of the Company or owned by the Company or any of its wholly owned Subsidiaries immediately prior to the Effective Time shall automatically be cancelled and shall cease to exist, and no cash or other consideration shall be delivered or deliverable in exchange therefore (such Shares, the "Treasury Shares" and together with the Shares described in Section 2.7(b), the "Cancelled Shares"); and

(d) Each share of common stock, par value $0.0001 per share, of Sub issued and outstanding immediately prior to the Effective Time shall be converted into one fully paid share of common stock, par value $0.0001 per share, of the Surviving Corporation.

Section 2.8 Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares (other than Cancelled Shares) outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of the Merger or consented thereto and who is entitled to demand and has properly demanded appraisal for such Shares in accordance with Section 262 of the DGCL, if such Section provides for appraisal rights for such Shares in the Merger ("Dissenting Shares"), shall not be converted into or be exchangeable for the right to receive a portion of the Merger Consideration unless and until such holder fails to perfect or withdraws or otherwise loses his, her or its right to appraisal and payment under the DGCL. If, after the Effective Time, any such holder fails to perfect or withdraws or loses his, her or its right to appraisal, such Dissenting Shares shall thereupon be treated as if he, she or it had been converted as of the Effective Time into the right to receive the portion of the Merger Consideration, if any, to which such holder is entitled pursuant to Section 2.7(a), without interest. The Company shall give the Acquiror (a) prompt notice of any demands received by the Company for appraisal of Shares, attempted written withdrawals of such demands, and any other instruments served pursuant to the DGCL and received by the Company relating to stockholders' rights to appraisal with respect to the Merger and (b) the opportunity to direct all negotiations and proceedings with respect to any exercise of such appraisal rights under the DGCL. The Company shall not, except with the prior written consent of the Acquiror, voluntarily make any payment with respect to any demands for payment of fair value for capital stock of the Company, offer to settle or settle any such demands or approve any withdrawal of any such demands.

Section 2.9 Company Options.

(a) At the Effective Time, each (i) Vested Cash-Out Option outstanding immediately prior to the Effective Time shall be cancelled and extinguished and be converted automatically into and become a right to receive at the times specified in this Agreement from the Surviving Corporation cash in an amount equal to (A) the number of shares of Company Common Stock for which such Vested Cash-Out Option is exercisable multiplied by (B) the excess of the Closing Date Per Share Consideration Cash Value, if any, over the per share exercise price of such Vested Cash-Out Option, in all instances less any applicable Taxes deducted or withheld pursuant to Section 2.16 and (ii) Vested Rollover Option outstanding immediately prior to the Effective Time shall be cancelled and extinguished and be converted automatically into and become a right to receive at the times specified in this Agreement from the Surviving Corporation an option to purchase the number of shares of the Parent Common Stock equal to the product of (A) the number of Shares of Company Common Stock for which such Vested Rollover Option is exercisable prior to the Effective Time multiplied by (B) the Exchange Ratio, rounded down to the nearest whole share, with such conversion effected through Parent assuming such Vested Rollover Option in accordance with the terms (as in effect as of the date of this Agreement) of the applicable Company Option Plan and the terms of the stock option agreement by which such Vested Rollover Option is evidenced (the "Converted Vested Options"). All such portions of the Vested Rollover Options shall be assumed by Parent and all rights thereunder shall thereupon be converted into rights with respect to the Parent Common Stock. Such assumed Vested Rollover Options shall otherwise be subject to the same terms and conditions applicable to the corresponding Vested Rollover Options under the applicable Company Option Plan and the stock option agreements evidencing grants thereunder, including vesting terms, except that all references to the Company shall be to Parent. The per share exercise price of each Converted Vested Option shall be equal to (x) the per share exercise price of the Vested Rollover Options from which it was converted divided by (y) the Exchange Ratio, rounded up the nearest whole cent. Prior to the Effective Time, the Company shall pass such resolutions and take such other actions as are necessary so as to cause the treatment of the Company Options as set forth in this Section 2.9. The assumption by Parent of the specified portion of the Vested Rollover Options shall be conducted such that each Vested Rollover Options that was an incentive stock option prior to the Effective Time remains an incentive stock option following the consummation of the transactions contemplated by this Agreement and the assumption by the Acquiror. Notwithstanding anything to the contrary set forth herein, Parent and the Acquiror shall withhold from any amounts otherwise payable to a Seller Indemnifying Party pursuant to this Section 2.9(a) such Seller Indemnifying Party's Pro Rata Share of the Adjustment Escrow Amount, the Indemnity Escrow Amount, the Special Indemnity Escrow Amount and the Stockholder Representative Holdback Amount. The holder of a Vested Option shall also be entitled to receive (when and if payable) cash in an amount equal to the number of shares of Company Common Stock for which such Vested Option is exercisable multiplied by the Additional Per Share Consideration, if any, in all instances less any applicable Taxes deducted or withheld pursuant to Section 2.16.

(b) At the Effective Time, to the extent not prohibited by applicable Law, each Unvested Option shall cease to represent a right to acquire shares of Company Common Stock and shall be assumed and converted automatically into and become an option to purchase shares of the Parent Common Stock. All Unvested Options shall be assumed by Parent and all rights thereunder shall thereupon be converted into that number of shares of the Parent Common Stock equal to the product of (A) the number of Shares of Company Common Stock for which such Unvested Option is exercisable multiplied by (B) the Exchange Ratio, rounded down to the nearest whole share, with such conversion effected through Parent assuming such Unvested Option in accordance with the terms (as in effect as of the date of this Agreement) of the applicable Company Option Plan and the terms of the stock option agreement by which such Unvested Option is evidenced (the "Converted Unvested Options"). Such Unvested Options shall otherwise be subject to the same terms and conditions applicable to the corresponding Unvested Options under the applicable Company Option Plan and the stock option agreements evidencing grants thereunder, including vesting terms, except that all references to the Company shall be to Parent. Prior to the Effective Time, the Company shall pass such resolutions and take such other actions as are necessary so as to cause the treatment of the Company Options as set forth in this Section 2.9. The per share exercise price of each Converted Unvested Option shall be equal to (x) the per share exercise price of the Unvested Option from which it was converted divided by (y) the Exchange Ratio, rounded up to the nearest whole cent. The assumption by Parent of the Unvested Options shall be conducted such that each Unvested Option that was an incentive stock option prior to the Effective Time remains an incentive stock option following the consummation of the transactions contemplated by this Agreement and the assumption by the Acquiror.

(c) At or prior to the Effective Time, the Acquiror shall take all actions reasonably necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of each partially assumed Vested Option and each assumed Unvested Option pursuant to this Section 2.9. With respect to the partially assumed Vested Options and assumed Unvested Options, Parent shall file with the SEC a registration statement on Form S-8 (or any successor form), relating to the Parent Common Stock issuable pursuant to the exercise of such assumed Vested Options and assumed Unvested Options as promptly as reasonably practical following the Closing and shall use commercially reasonable efforts to maintain the effectiveness of such Form S-8 at all times during which any such assumed Company Options remain outstanding.

Section 2.10 Company Warrants. At the Effective Time, each In-the-Money Warrant outstanding immediately prior to the Effective Time shall be cancelled and extinguished and be converted automatically into and become a right to receive at the times specified in this Agreement from the Surviving Corporation (a) cash in an amount equal to (i) the number of shares of Company Common Stock for which such In-the-Money Warrant is exercisable multiplied by (ii) the excess of the Closing Date Per Share Cash Consideration, if any, over the per share exercise price of such In-the-Money Warrant, plus (b) a number of shares of the Parent Common Stock equal to (i) the number of shares of Company Common Stock for which such In-the-Money Warrant is exercisable multiplied by (ii) an amount equal to (x) the Closing Date Per Share Equity Consideration multiplied by (y) an amount equal to (1) the value of the Closing Date Per Share Equity Consideration (based on the Parent Share Value), minus the excess of the per share exercise price of such In-the-Money Warrant, if any, over the Closing Date Per Share Cash Consideration divided by (2) the value of the Closing Date Per Share Equity Consideration (based on the Parent Share Value), plus (c) (when and if payable) cash in an amount equal to (i) the number of shares of Company Common Stock for which such In-the-Money Warrant is exercisable multiplied by (ii) the Additional Per Share Consideration, if any, in all instances less any applicable Taxes deducted or withheld pursuant to Section 2.16. The amounts described in this Section 2.10 shall be deemed to have been paid in full satisfaction of all rights pertaining to such In-the-Money Warrants.

Section 2.11 Payment for Shares, Company Options and Company Warrants.

(a) Notwithstanding anything to the contrary set forth herein, Parent and the Acquiror shall withhold from the consideration otherwise payable to the Seller Indemnifying Parties pursuant to this Agreement (including Section 2.7, Section 2.9(a) and Section 2.10) each Seller Indemnifying Party's Pro Rata Share of the Adjustment Escrow Amount, the Indemnity Escrow Amount, the Special Indemnity Escrow Amount and the Stockholder Representative Holdback Amount.

(b) The Company has appointed ComputerShare to act as exchange agent in connection with the Merger (the "Exchange Agent") pursuant to an exchange agent agreement providing for, among other things, the matters set forth in this Section 2.11. Immediately following the Effective Time, the Acquiror and Parent shall, or shall cause the Surviving Corporation, to deposit with the Exchange Agent, for the benefit of holders of Shares (each, a "Stockholder") and In-the-Money Warrants, (A) cash in an amount equal to the aggregate amount of cash payable to the Stockholders and holders of In-the- Money Warrants under Section 2.7 and Section 2.10 less (x) the Dissenting Shares Amounts, (y) such Stockholders' and holders' of In-the-Money Warrants aggregate Pro Rata Share of the Adjustment Escrow Amount, Indemnity Escrow Amount, Special Indemnity Escrow Amount and Stockholder Representative Holdback Amount and (z) the Employee Loan Amount, by wire transfer of immediately available funds to such account or accounts designated in writing by the Exchange Agent and (B) book-entry shares representing the full amount of Share Consideration to be issued to the Stockholders and holder of In-the-Money Warrants less any Share Consideration attributed to the Dissenting Shares; provided, that the Acquiror and Parent shall thereafter promptly deposit with the Exchange Agent any portion of the Merger Consideration that may become due with respect to Dissenting Shares as specified in Section 2.8. All cash funds shall be invested as directed by the Acquiror or the Surviving Corporation, as the case may be, pending payment thereof by the Exchange Agent to the Stockholders. Earnings from such investments shall be the sole and exclusive property of the Acquiror or the Surviving Corporation, as the case may be, and no part thereof shall accrue to the benefit of Stockholders.

(c) On the Closing Date, the Company shall deliver written instructions to its transfer agent eShares, Inc., d/b/a Carta, Inc. ("Carta"), with a copy to the Acquiror, directing Carta to (i) cancel all book-entry entitlements in the form of electronic stock certificates on the Carta electronic capitalization management system existing prior to the Closing Date representing issued and outstanding Shares (the "Certificates"), effective as of the Effective Time and (ii) deliver to the Acquiror and the Exchange Agent, as promptly as practicable, but in no event later than one Business Day after the Effective Time, written confirmation of such cancellation of all Certificates.

(d) Following the Effective Time and upon delivery to the Exchange Agent of (x) a letter of transmittal substantially in the form set forth on Exhibit F (a "Letter of Transmittal"), duly executed, (y) a Stockholder Consent and Agreement, duly executed and (z) an investor questionnaire substantially in the form set forth on Exhibit G (an "Investor Questionnaire"), completed, duly executed and provided to the Acquiror or its agent or designee by the holder of such Certificate, the holder of such Certificate shall be entitled to receive in exchange therefor (as promptly as practicable), (A) an amount in cash as set forth in the Merger Consideration Schedule and equal to (1) (w) the Closing Date Per Share Cash Consideration multiplied by (x) the number of Shares formerly represented by such Certificate minus (2) such holder's Pro Rata Share of the Adjustment Escrow Amount, Indemnity Escrow Amount, the Special Indemnity Escrow Amount, the Stockholder Representative Holdback Amount and, with respect to Shyam Rao, the Employee Loan Amount and (B) subject to Section 2.11(f), an amount in Share Consideration as set forth in the Merger Consideration Schedule and equal to (y) the Closing Date Per Share Equity Consideration multiplied by (z) the number of Shares formerly represented by such Certificate, each without interest. Each such holder shall also be entitled to their Pro Rata Share of the Adjustment Escrow Amount, Indemnity Escrow Amount, Special Indemnity Escrow Amount, Stockholder Representative Holdback Amount and any Additional Consideration as set forth in the Merger Consideration Schedule that may be payable in respect of the Shares formerly represented by such Certificate as provided in this Agreement and the Escrow Agreement, at the respective times and subject to the contingencies specified herein and therein. If payment in respect of any Certificate is to be made to a Person other than the Person in whose name such Certificate is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or shall otherwise be in proper form for transfer, that the signatures on such Certificate or any related stock power shall be properly guaranteed and that the Person requesting such payment shall have established to the satisfaction of the Acquiror and the Exchange Agent that any transfer and other Taxes required by reason of such payment to a Person other than the registered holder of such Certificate have been paid or are not applicable.

(e) At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers of any shares of capital stock thereafter on the records of the Company. If, after the Effective Time, a Certificate (other than one representing Cancelled Shares) is presented to the Surviving Corporation, it shall be cancelled and exchanged as provided in this Section 2.11.

(f) All cash paid and Parent Common Stock issued upon conversion of the Shares in accordance with the terms of this Article II and all cash deposited with the Escrow Agent and the Company pursuant to this Article II shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares. From and after the Effective Time, the holders of Certificates shall cease to have any rights with respect to Shares represented thereby, except as otherwise provided herein or by applicable Law.

(g) [Reserved].

(h) At any time following the date that is one year after the Effective Time, the Acquiror shall be entitled to require the Exchange Agent to deliver to it any cash and Parent Common Stock (including any interest or other income received with respect thereto) or Share Consideration that had been made available to the Exchange Agent and that have not been disbursed to holders of Certificates, or any Certificates or other documents relating to the Merger in its possession, and thereafter such holders shall be entitled to look to the Acquiror only as general creditors thereof with respect to any portion of the Merger Consideration payable upon due surrender of their Certificates, without interest; provided, that any such portion of the Merger Consideration payable from the Adjustment Escrow Fund, the Indemnity Escrow Fund or the Special Indemnity Escrow Fund shall be held and distributed to the Person(s) entitled thereto in accordance with the terms of this Agreement and the Escrow Agreement, at the respective times and subject to the contingencies specified herein and therein. Notwithstanding anything to the contrary in this Section 2.11, to the fullest extent permitted by applicable Law, none of the Exchange Agent, Parent, the Acquiror or the Surviving Corporation shall be liable to any holder of a Certificate for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(i) Parent, the Acquiror, Sub, the Stockholder Representative and the Company agree that to avoid delay, expense, and administrative inconvenience, immediately following the Effective Time, Parent and the Acquiror will deposit with the Surviving Corporation, or otherwise reserve through its transfer agent, book-entry shares representing the full amount of Share Consideration to be issued to the holders of Vested Options and holders of In-the-Money Warrants, in each case, in accordance with the Merger Consideration Schedule. As promptly as practicable after the Effective Time, the Surviving Corporation shall, in exchange for the Vested Options and the In-the-Money Warrants, make the cash payment and deliver (or cause to be delivered) the Share Consideration in respect of each such Vested Option or In-the-Money Warrant to which each holder thereof is entitled as specified in Section 2.9(a) or 2.10, respectively; provided, that the Acquiror, in its sole discretion, shall be permitted to make such cash payments utilizing the payroll system of the Company or any of its Subsidiaries in lieu of complying with Section 2.11(g).

(j) Notwithstanding anything to the contrary contained herein, no certificates or scrip representing fractional shares of the Parent Common Stock shall be issued pursuant to Section 2.7, Section 2.9, Section 2.10 or this Section 2.11, no dividends or other distributions with respect to the Parent Common Stock shall be payable on or with respect to any fractional share, and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of Parent. In lieu of the issuance of any such fractional share, Parent shall pay to each former Stockholder, holder of Vested Options or holder of In-the-Money Warrants who otherwise would be entitled to receive a fractional share of the Parent Common Stock an amount in cash (without interest) determined by multiplying (i) the fraction of a share of the Parent Common Stock which such holder would otherwise be entitled to receive (taking into account all Shares, Vested Options or In-the-Money Warrants held at the Effective Time by such holder and rounded to the nearest thousandth when expressed in decimal form) pursuant to Section 2.7, Section 2.9 and Section 2.10 multiplied by (ii) the Parent Share Value. The parties acknowledge that payment of cash in lieu of fractional shares is solely for the purpose of avoiding the expense and inconvenience to Parent of issuing fractional shares and does not represent separately bargained for consideration.

(k) For the avoidance of doubt, prior to any issuance of the Parent Common Stock to any Stockholder, holder of Vested Options or holder of In-the-Money Warrants, such Stockholder, holder of Vested Options or holder of In-the-Money Warrants shall have delivered a completed and duly executed Investor Questionnaire to the Acquiror.

Section 2.12 Certain Deliveries.

(a) Concurrently with the Effective Time, the Acquiror shall deliver, or cause to be delivered:

(i) with the Escrow Agent for deposit into the Adjustment Escrow Fund, the Adjustment Escrow Amount;

(ii) with the Escrow Agent for deposit into the Indemnity Escrow Fund, the Indemnity Escrow Amount;

(iii) with the Escrow Agent for deposit into the Special Indemnity Escrow Fund, the Special Indemnity Escrow Amount;

(iv) with the Company, an amount necessary to make payment of the aggregate cash amounts due to holders of Vested Options pursuant to Section 2.9(a)(i);

(v) on behalf of the Company, the amount payable to each counterparty or holder of Indebtedness identified on Schedule 2.2(b)(v) of the Disclosure Schedules (the "Payoff Indebtedness") in order to fully discharge such Payoff Indebtedness and terminate all applicable obligations and liabilities of the Company and any of its Affiliates related thereto, as specified in the Debt Payoff Letters and in accordance with this Agreement;

(vi) on behalf of the Company, the amount payable to each Person who is owed a portion of the Estimated Transaction Expenses, as specified in the Transaction Expenses Payoff Instructions and in accordance with this Agreement;

(vii) to the Stockholder Representative, the Stockholder Representative Holdback Amount; and

(viii) to the Stockholder Representative, an executed counterpart to the Escrow Agreement signed by the Acquiror.

(b) At or prior to the Closing, the Company shall deliver, or cause to be delivered, to the Acquiror:

(i) all third party consents set forth on Schedule 2.12(b)(i) of the Disclosure Schedules, in form and substance to the Acquiror in its sole discretion;

(ii) letters of resignation from the officers or directors of the Company and each of its Subsidiaries, in form and substance satisfactory to the Acquiror;

(iii) a payoff letter duly executed by each holder of Payoff Indebtedness, each in form and substance reasonably acceptable to the Acquiror (each such payoff letter, a "Debt Payoff Letter");

(iv) reasonably satisfactory documentation setting forth an itemized list of all, and amounts of all, Transaction Expenses, including the identity of each payee, dollar amounts owed, wire transfer instructions and any other information necessary to effect the final payment in full thereof, and copies of final invoices from each such payee acknowledging the invoiced amounts as full and final payment for all services rendered to the Company or its Subsidiaries (and as of the Effective Time, the Surviving Corporation) (the "Transaction Expenses Payoff Instructions");

(v) a certificate of the Company certifying that the Company is not, and has not been, a United States real property holding corporation, within the meaning of Section 897 of the Code, during the applicable period specified in Section 897(c)(1)(a)(ii) of the Code, which certificate complies with the requirements of Section 1445 of the Code;

(vi) evidence in form and substance satisfactory to the Acquiror that the Company has (A) duly adopted a unanimous written consent of the Board of Directors of the Company declaring that each Plan that includes a cash or deferred arrangement under Section 401(k) of the Code (a "401(k) Plan") is terminated effective as of the day before the Closing Date and (B) made all employer and employee contributions to each 401(k) Plan so that no further contributions are due after the Closing Date;

(vii) a duly executed Investor Questionnaire affirming his, her or its status as an Accredited Investor from Stockholders and holders of the In-the-Money Warrants who is a Requisite Holder;

(viii) evidence in form and substance satisfactory to the Acquiror that all accounts or contracts between the Company or any of its Subsidiaries, on the one hand, and any Stockholder and its respective Affiliates, on the other hand, and, in each case, as set forth on Schedule 2.2(b)(viii) of the Disclosure Schedules, has been cancelled without any consideration or further liability to any party, effective as of immediately prior to the Closing;

(ix) evidence that the Company and each holder of Unvested Options set forth on Schedule 2.2(b)(ix) of the Disclosure Schedules have entered into an Amendment to Stock Option Agreement in the form attached hereto as Exhibit I with respect to such Unvested Options;

(x) an undertaking from the nominee shareholder of Punchh Tech India Private Limited, in form and substance satisfactory to the Acquiror, acknowledging and agreeing to take such actions as may be necessary or desirable to vest, perfect, confirm and transfer any and all right, title and interest in, to and under, the equity interests of Punchh Tech India Private Limited held by such nominee to a designee of the Acquiror (the "Letter of Undertaking"); and

(xi) evidence, in form and substance satisfactory to Parent, that (i) all "disqualified individuals" (as such term is defined in the Treasury Regulations promulgated under Section 280G of the Code) have waived their rights to any Potential 280G Benefits absent approval of such benefits by the requisite Stockholders pursuant to Section 280G of the Code and the regulations thereunder and (ii) the Stockholders (A) have approved by the requisite vote any Potential 280G Benefits or (B) have voted upon such Potential 280G Benefits and the requisite vote was not obtained with respect to the Potential 280G Benefits and that the "disqualified individuals" shall have forfeited any and all Potential 280G Benefits

(c) All payments hereunder shall be made by wire transfer of immediately available funds in United States dollars to such account as may be designated to the payor by the payee at least two Business Days prior to the applicable payment date.

Section 2.13 Closing Estimates and Merger Consideration Schedule.

(a) Attached hereto as Schedule 2.13(a)(i) of the Disclosure Schedules is a written statement prepared by the Company that includes (i) a consolidated balance sheet of the Company and its Subsidiaries, including all notes thereto, as of immediately prior to the Closing (the "Preliminary Closing Balance Sheet"), (ii) a good-faith estimate of (A) Net Working Capital based on the Preliminary Closing Balance Sheet (the "Estimated Net Working Capital"), (B) Indebtedness (the "Estimated Indebtedness"), (C) Cash (the "Estimated Cash") and (D) all Transaction Expenses (the "Estimated Transaction Expenses") (with each of Estimated Net Working Capital, Estimated Cash, Estimated Indebtedness and Estimated Transaction Expenses determined as of immediately prior to the Closing and, except for Estimated Transaction Expenses, without giving effect to the transactions contemplated herein) and (iii) on the basis of the foregoing, a calculation of the Closing Date Cash Consideration. All such estimates shall control solely for purposes of determining the amounts payable at the Closing pursuant to Section 2.11 and shall not limit or otherwise affect the Acquiror's remedies under this Agreement or otherwise, or constitute an acknowledgement by the Acquiror of the accuracy of the amounts reflected thereof.

(b) Attached hereto as Schedule 2.13(b) of the Disclosure Schedules is a schedule prepared by the Company (the "Merger Consideration Schedule") which identifies the Stockholders, holders of Vested Options and holders of In-the-Money Warrants as of immediately prior to the Effective Time and sets forth: (i) the number of outstanding Shares of Company Common Stock held by each such Stockholder as of the signing of this Merger Agreement and as of immediately prior to the Effective Time, (ii) the number of outstanding Shares of each series of Company Preferred Stock held by each such Stockholder as of the signing of this Merger Agreement and the number of Shares of Company Common Stock into which such Company Preferred Stock shall convert into immediately prior to the Effective Time in accordance with the Stockholder Consent and Agreement and the Company Charter, (iii) the number of Vested Options and In-the-Money Warrants held by each such holder, (iv) the allocation of the Closing Date Cash Consideration (including a calculation of the Closing Date Per Share Cash Consideration), the Share Consideration (including a calculation of the Closing Date Per Share Equity Consideration) and any cash in lieu of fractional shares amongst the Stockholders, holders of Vested Options and holders of In-the-Money Warrants, (v) the Pro Rata Share of each Seller Indemnifying Party, (vi) the allocation of the Adjustment Escrow Amount, the Indemnity Escrow Amount, the Special Indemnity Escrow Amount and the Stockholder Representative Holdback Amount amongst the Seller Indemnifying Parties, (vii) the total number of Fully Diluted Common Shares, (viii) identification of the Unaccredited Investors, if any, and (ix) the allocation of the Aggregate Unaccredited Cash Consideration amongst each of the Unaccredited Investors and the allocation of Closing Date Per Share Equity Consideration that would be payable for each such Share, Vested Option or In-the-Money Warrant Beneficially Owned by each such Unaccredited Investor to the Shares, Vested Options and In-the-Money Warrants Beneficially Owned by the Accredited Investors, in each case, as and if applicable. Notwithstanding anything to the contrary in this Article II, the Company and the Stockholder Representative agree and acknowledge that Parent and the Acquiror may rely on the Merger Consideration Schedule for purposes of calculating all payments to be made under this Article II with respect to the portion of the Merger Consideration to be delivered to all Stockholders, holders of Vested Options and holders of In-the-Money Warrants.

Section 2.14 Post-Closing Adjustment of Merger Consideration.

(a) Within 90 days after the Closing Date, the Surviving Corporation shall prepare and deliver to the Stockholder Representative (on behalf of the Stockholders) a written statement (the "Final Closing Statement") that shall include and set forth a calculation of the actual (i) Net Working Capital (the "Closing Net Working Capital"), (ii) Indebtedness (the "Closing Indebtedness"), (iii) Cash (the "Closing Cash"), and (iv) Transaction Expenses (the "Closing Transaction Expenses") (with each of Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses determined as of immediately prior to the Closing and, except for Closing Transaction Expenses, without giving effect to the transactions contemplated herein). Closing Net Working Capital, Closing Indebtedness and Closing Cash shall be calculated in accordance with the Applicable Accounting Principles.

(b) The Final Closing Statement shall become final and binding on the 30th day following delivery thereof, unless prior to the end of such period, the Stockholder Representative delivers to the Acquiror written notice of its disagreement (a "Notice of Disagreement") specifying the nature and amount of any dispute as to the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses, as set forth in the Final Closing Statement. The Stockholder Representative shall be deemed to have agreed with all items and amounts of Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses not specifically referenced in the Notice of Disagreement, and such items and amounts shall not be subject to review in accordance with Section 2.14(c). Any Notice of Disagreement may reference only disagreements based on mathematical errors or based on amounts of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses as reflected on the Final Closing Statement not being calculated in accordance with this Section 2.14.

(c) During the 15-day period following delivery of a Notice of Disagreement by the Stockholder Representative to the Acquiror, the parties in good faith shall seek to resolve in writing any differences that they may have with respect to the computation of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and/or Closing Transaction Expenses as specified therein. Any disputed items resolved in writing between the Stockholder Representative and the Acquiror within such 15-day period shall be final and binding with respect to such items, and if the Stockholder Representative and the Acquiror agree in writing on the resolution of each disputed item specified by the Stockholder Representative in the Notice of Disagreement and the amount of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses, the amounts so determined shall be final and binding on the parties for all purposes hereunder and shall not be subject to appeal or further review. If the Stockholder Representative and the Acquiror have not resolved all such differences by the end of such 15-day period, the Stockholder Representative and the Acquiror shall submit, in writing, to an independent public accounting firm (the "Independent Accounting Firm"), their briefs detailing their views as to the correct nature and amount of each item remaining in dispute and the amounts of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses, and the Independent Accounting Firm shall make a written determination as to each such disputed item and the amount of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses, which determination shall be final and binding on the parties for all purposes hereunder. The Independent Accounting Firm shall consider only those items and amounts in the Stockholder Representative's and the Acquiror's respective calculations of the Closing Net Working Capital, Closing Indebtedness, Closing Cash and Closing Transaction Expenses that are identified as being items and amounts to which the Stockholder Representative and the Acquiror have been unable to agree. In resolving any disputed item, the Independent Accounting Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The Independent Accounting Firm shall be PricewaterhouseCoopers or, if such firm is unable or unwilling to act, such other independent public accounting firm as shall be agreed in writing by the Stockholder Representative and the Acquiror. The Stockholder Representative and the Acquiror shall use their commercially reasonable efforts to cause the Independent Accounting Firm to render a written decision resolving the matters submitted to it as promptly as practicable, and in any event within 30 days following the submission thereof. Judgment may be entered upon the written determination of the Independent Accounting Firm in accordance with Section 7.10. In acting under this Agreement, the Independent Accounting Firm will be entitled to the powers, privileges and immunities of an arbitrator.

(d) The costs of any dispute resolution pursuant to Section 2.14(c), including the fees and expenses of the Independent Accounting Firm and of any enforcement of the determination thereof, shall be borne by the Stockholder Representative (on behalf of the Seller Indemnifying Parties) and the Acquiror in inverse proportion as they may prevail on the matters resolved by the Independent Accounting Firm, which proportionate allocation shall be calculated on an aggregate basis based on the relative dollar values of the amounts in dispute and shall be determined by the Independent Accounting Firm at the time the determination of such firm is rendered on the merits of the matters submitted. The fees and disbursements of the Representatives of each party incurred in connection with the preparation or review of the Final Closing Statement and preparation or review of any Notice of Disagreement, as applicable, shall be borne by such party.

(e) The Acquiror, during the period from and after the date of delivery of the Final Closing Statement through the resolution of any adjustment to the Merger Consideration contemplated by this Section 2.14 shall cause the Surviving Corporation to, afford the Stockholder Representative and its Representatives reasonable access(including remote access by way of a dataroom), during normal business hours and upon reasonable prior notice, to the personnel, properties, books and records of the Surviving Corporation and to any other information reasonably requested for purposes of preparing and reviewing the calculations contemplated by this Section 2.14 (subject to any applicable COVID-19 Measures). Each party shall authorize its accountants to disclose work papers generated by such accountants in connection with preparing and reviewing the calculations of the Net Working Capital, Cash and Indebtedness as specified in this Section 2.14; provided, that such accountants shall not be obligated to make any work papers available except in accordance with such accountants' disclosure procedures and then only after the non-client party has signed an agreement relating to access to such work papers in form and substance acceptable to such accountants.

(f) The Merger Consideration shall be adjusted, upwards or downwards, as follows:

(i) For the purposes of this Agreement, the "Net Adjustment Amount" means an amount, which may be positive or negative, equal to (A) the Closing Working Capital Overage, minus the Estimated Working Capital Overage, minus (B) the Closing Working Capital Underage, minus the Estimated Working Capital Underage, plus (C) the Estimated Indebtedness, minus the Closing Indebtedness as finally determined pursuant to this Section 2.14, plus (D) the Closing Cash as finally determined pursuant to this Section 2.14, minus the Estimated Cash, plus (E) the Estimated Transaction Expenses, minus the Closing Transaction Expenses, as finally determined pursuant to this Section 2.14;

(ii) If the Net Adjustment Amount is positive, the Merger Consideration shall be adjusted upwards in an amount equal to the Net Adjustment Amount. In such event, (A) the Stockholder Representative and the Acquiror shall promptly deliver joint written notice to the Escrow Agent specifying the Net Adjustment Amount, (B) the Acquiror shall pay the Net Adjustment Amount to (1) the Exchange Agent for delivery to the Stockholders (other than holders of any Dissenting Shares or Cancelled Shares) and holders of In-the-Money Warrants and (2) the Surviving Corporation for delivery to holders of Vested Options through the Surviving Corporation's payroll system and (C) the Escrow Agent shall pay all funds in the Adjustment Escrow Fund to (1) the Exchange Agent for delivery to the Stockholders (other than holders of any Dissenting Shares or Cancelled Shares) and holders of In-the-Money Warrants and (2) the Surviving Corporation for delivery to holders of Vested Options through the Surviving Corporation's payroll system. Payment of such amounts to the Seller Indemnifying Parties shall be made pro rata in accordance with their respective Pro Rata Share; and

(iii) If the Net Adjustment Amount is negative (in which case the "Net Adjustment Amount" for purposes of this clause (iii) shall be deemed to be equal to the absolute value of such amount), the Merger Consideration shall be adjusted downwards in an amount equal to the Net Adjustment Amount. In such event, the Acquiror and the Stockholder Representative shall promptly deliver joint written notice to the Escrow Agent specifying the Net Adjustment Amount, and the Escrow Agent shall pay the Net Adjustment Amount out of the Adjustment Escrow Fund to the Acquiror in accordance with the terms of the Escrow Agreement. If the Adjustment Escrow Fund is insufficient to cover the entire amount payable to the Acquiror pursuant hereto, then the Escrow Agent shall distribute the entire Adjustment Escrow Fund to the Acquiror as provided in the Escrow Agreement, and the Acquiror may, in its sole discretion, deliver written notice to the Escrow Agent and the Stockholder Representative specifying the amount that has not been so paid, and the Escrow Agent shall pay such amount out of the Indemnity Escrow Fund to the Acquiror in accordance with the terms of the Escrow Agreement; provided, that the Seller Indemnifying Parties shall, severally and not jointly in accordance with their respective Indemnity Pro Rata Share and subject to the Indemnification Cap, remain liable in the event the Indemnity Escrow Fund is insufficient to cover the amount of such deficiency. In the event the amount of funds in the Adjustment Escrow Fund exceeds the Net Adjustment Amount, then the Escrow Agent, after paying the Net Adjustment Amount to the Acquiror as provided herein, shall pay the remaining funds in the Adjustment Escrow Fund to (1) the Exchange Agent for delivery to the Stockholders (other than holders of any Dissenting Shares or Cancelled Shares) and holders of In-the-Money Warrants and (2) the Surviving Corporation for delivery to holders of Vested Options through the Surviving Corporation's payroll system. Payment of such amounts to the Seller Indemnifying Parties shall be made pro rata in accordance with their respective Pro Rata Share.

(g) Payments in respect of Section 2.14(f) shall be made within three Business Days of final determination of the Net Adjustment Amount pursuant to the provisions of this Section 2.14 by wire transfer of immediately available funds to such account or accounts as may be designated in writing by the party entitled to such payment at least two Business Days prior to such payment date; provided, however, that any payments made to holders of Vested Options and holders of In-the-Money Warrants shall be made in accordance with Section 2.11(g).

Section 2.15 Stockholder Representative Holdback Amount. The Stockholder Representative shall be entitled to distribute all or any portion of the amount remaining in the Stockholder Representative Holdback Amount (if any) to the Exchange Agent, Surviving Corporation and/or Parent, as applicable, for further distribution to the Seller Indemnifying Parties based on their respective Pro Rata Share from time to time in accordance with the Stockholder Representative Engagement Agreement.

Section 2.16 Withholding Rights. Each of Parent, the Acquiror, the Surviving Corporation, the Escrow Agent and the Exchange Agent shall be entitled to deduct and withhold from any consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign Tax Law. To the extent that such amounts are so withheld or paid over to or deposited with the relevant Governmental Authority by Parent, the Acquiror, the Surviving Corporation, the Escrow Agent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect to which such deduction and withholding was made.

Section 2.17 Stockholder Representative.

(a) By the approval of this Agreement pursuant to the DGCL and the Stockholder Consent and Agreement, and without any further action of any other party, the Seller Indemnifying Parties irrevocably appoint and constitute Fortis Advisors LLC as the exclusive agent, proxy and attorney-in-fact, with full power of substitution, to act on behalf of the Seller Indemnifying Parties for certain limited purposes, as specified herein (the "Stockholder Representative"), including the full power and authority to act on the Stockholders' behalf as provided in Section 2.17(b). The Seller Indemnifying Parties, by approving this Agreement, further agree that such exclusive agency, proxy and attorney-in-fact, and the powers, immunities and rights to indemnification granted to the Stockholder Representative Group hereunder: (i) are coupled with an interest, are therefore irrevocable without the consent of the Stockholder Representative, except as provided in Section 2.17(c), and shall be binding upon the successors, heirs, executors, administers and legal representatives of each Seller Indemnifying Party and shall not be affected by, and shall survive, the death, incapacity, bankruptcy, dissolution or liquidation of any Seller Indemnifying Party and (ii) shall survive the delivery of an assignment by any Seller Indemnifying Party of the whole or any fraction of his, her or its interest in the Indemnity Escrow Amount or Special Indemnity Escrow Amount. All decisions, actions, consents and instructions by the Stockholder Representative under this Agreement, the Escrow Agreement or the Stockholder Representative Engagement Agreement shall be binding upon all of the Seller Indemnifying Parties and their successors as if expressly confirmed and ratified in writing by the Seller Indemnifying Parties, and no Seller Indemnifying Party shall have the right to object to, dissent from, protest or otherwise contest any such decision, action, consent or instruction. Parent, the Acquiror and Sub shall be entitled to rely on any decision, action, consent or instruction of the Stockholder Representative as being the decision, action, consent or instruction of each Seller Indemnifying Party, and Parent, the Acquiror and Sub are hereby relieved from any liability to any Person for acts done by them in accordance with any such decision, act, consent or instruction. The Stockholder Representative shall be entitled to: (i) rely upon the Merger Consideration Schedule, (ii) rely upon any signature believed by it to be genuine, and (iii) reasonably assume that a signatory has proper authorization to sign on behalf of the applicable Stockholder or other party.

(b) The Stockholder Representative shall have such powers and authority as are necessary to carry out the functions assigned to it under this Agreement, the Escrow Agreement and the Stockholder Representative Engagement Agreement. Without limiting the generality of the foregoing, the Stockholder Representative shall have full power, authority and discretion to (i) consummate the transactions contemplated under this Agreement and the Ancillary Agreements (including pursuant to Section 2.14 hereof); (ii) negotiate disputes arising under, or relating to, this Agreement and the Ancillary Agreements (including pursuant to Section 2.14 and Article VI hereof); (iii) authorize receipt and disbursement to the Seller Indemnifying Parties any funds due to the Seller Indemnifying Parties under this Agreement or the Ancillary Agreements (including pursuant to Section 2.14 and Article VI hereof); (iv) withhold any amounts receivable by the Seller Indemnifying Parties under this Agreement or otherwise to satisfy any and all obligations or liabilities incurred by the Seller Indemnifying Parties or the Stockholder Representative in the performance of their duties hereunder (including pursuant to Section 2.14, Section 2.15 and Article VI hereof); (v) execute and deliver any amendment or waiver to this Agreement and the Ancillary Agreements in its capacity as the Stockholder Representative; and (vi) take all other actions to be taken by or on behalf of the Seller Indemnifying Parties in connection with this Agreement (including pursuant to Section 2.14 and Article VI hereof), the Escrow Agreement, the Stockholder Representative Engagement Agreement and the Ancillary Agreements. Notwithstanding the foregoing, the Stockholder Representative shall have no obligation to act on behalf of the Seller Indemnifying Parties, except as expressly provided herein, in the Escrow Agreement, and in the Stockholder Representative Engagement Agreement, and for purposes of clarity, there are no obligations of the Stockholder Representative in any ancillary agreement, schedule, exhibit or the Disclosure Schedules.

(c) The Stockholder Representative may resign at any time, and may be removed for any reason or no reason by the vote or written consent of the Seller Indemnifying Parties holding an aggregate Pro Rata Share of over 50% (the "Majority Holders"), with the prior consent of the Acquiror, not to be unreasonably withheld. In the event of the death, incapacity, resignation or removal of the Stockholder Representative, a new Stockholder Representative shall be appointed by the vote or written consent of the Majority Holders, with the prior consent of the Acquiror, not to be unreasonably withheld. Notice of such vote or a copy of the written consent appointing such new Stockholder Representative shall be sent to the Acquiror and, after the Effective Time, to the Surviving Corporation, such appointment to be effective upon the later of the date indicated in such consent or the date such consent is received by the Acquiror and, after the Effective Time, the Surviving Corporation; provided, that until such notice is received, Parent, the Acquiror, Sub and the Surviving Corporation, as applicable, shall be entitled to rely on the decisions, actions, consents and instructions of the prior Stockholder Representative as described in Section 2.17(a). The immunities and rights to indemnification shall survive the resignation or removal of the Stockholder Representative or any member of the Advisory Group and the Closing and/or any termination of this Agreement and the Escrow Agreement.

(d) The Stockholder Representative shall be entitled to the Stockholder Representative Holdback Amount: (i) for reimbursement for all reasonable Stockholder Representative Expenses, disbursements and advances (including fees and disbursements of its counsel, experts and other agents and consultants) incurred by the Stockholder Representative in such capacity under this Agreement, the Escrow Agreement or the Stockholder Representative Engagement Agreement, and (ii) as otherwise determined by the Advisory Group; provided, that, other than the payment of the Stockholder Representative Holdback Amount paid on the Closing Date, neither Parent, the Acquiror nor the Company nor its Subsidiaries shall have any monetary obligation or liability to the Stockholder Representative. The Stockholder Representative is not providing any investment supervision, recommendations or advice and shall have no responsibility or liability for any loss of principal of the Stockholder Representative Holdback Amount other than as a result of its gross negligence or willful misconduct. The Stockholder Representative is not acting as a withholding agent or in any similar capacity in connection with the Stockholder Representative Holdback Amount and has no tax reporting or income distribution obligations. The Seller Indemnifying Parties will not receive any interest on the Stockholder Representative Holdback Amount and assign to the Stockholder Representative any such interest. Subject to Advisory Group approval, the Stockholder Representative may contribute funds to the Stockholder Representative Holdback Amount from any consideration otherwise distributable to the Stockholders. As soon as reasonably determined by the Stockholder Representative that the Stockholder Representative Holdback Amount is no longer required to be withheld, the Stockholder Representative shall distribute the remaining Stockholder Representative Holdback Amount (if any) to the Exchange Agent, the Surviving Corporation and/or Parent, as applicable, for further distribution to the Stockholders.

(e) Certain Stockholders have entered into an engagement agreement (the "Stockholder Representative Engagement Agreement") with the Stockholder Representative to provide direction to the Stockholder Representative in connection with its services under this Agreement, the Escrow Agreement, the Exchange Agent Agreement and the Stockholder Representative Engagement Agreement (such Stockholders, including their individual representatives, collectively hereinafter referred to as the "Advisory Group"). As between the Stockholders and the Stockholder Representative, neither the Stockholder Representative nor its members, managers, directors, officers, contractors, agents and employees nor any member of the Advisory Group (collectively, the "Stockholder Representative Group"), shall be liable for any act done or omitted hereunder, under the Escrow Agreement or under the Stockholder Representative Engagement Agreement as Stockholder Representative, except to the extent such actions or omissions shall have been determined by a court of competent jurisdiction to constitute fraud, intentional misconduct or bad faith (it being understood any act done or omitted to be done pursuant to the advice of counsel shall be conclusive evidence of good faith). The Stockholder Representative Group shall be entitled to be indemnified, defended and held harmless by the Seller Indemnifying Parties, severally and not jointly, against any loss, liability, claim, damage, fee, cost, judgment, fine, amount paid in settlement or expense (including fees, disbursements and costs of counsel and other skilled professionals and in connection with seeking recovery from insurers) (collectively, the "Stockholder Representative Expenses") incurred without fraud, intentional misconduct or bad faith on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of its duties hereunder, under the Escrow Agreement or under the Stockholder Representative Engagement Agreement; provided, however, that no Seller Indemnifying Party shall be liable to the Stockholder Representative, together with any other amounts that such Seller Indemnifying Party is liable for to any other Person under this Agreement or the Ancillary Agreements, for any amount in excess of the portion of the Merger Consideration to which such Stockholder is entitled. Such Stockholder Representative Expenses may be recovered first, from the Stockholder Representative Holdback Amount, second, from any distribution of the Indemnity Escrow Amount or Special Indemnity Escrow Amount otherwise distributable to the Seller Indemnifying Parties at the time of distribution, and third, directly from the Seller Indemnifying Parties. The Seller Indemnifying Parties acknowledge that the Stockholder Representative shall not be required to expend or risk its own funds or otherwise incur any financial liability in the exercise or performance of any of its powers, rights, duties or privileges or pursuant to this Agreement, the Escrow Agreement, the Stockholder Representative Engagement Agreement or the transactions contemplated hereby or thereby. Furthermore, the Stockholder Representative shall not be required to take any action unless the Stockholder Representative has been provided with funds, security or indemnities which, in its determination, are sufficient to protect the Stockholder Representative against the costs, expenses and liabilities which may be incurred by the Stockholder Representative in performing such actions. Parent, the Acquiror and Sub shall not be responsible for any decision, action, consent or instruction of the Stockholder Representative, and for avoidance of doubt, Parent, the Acquiror and Sub shall have no obligation or liability under this Section 2.17.

Section 2.18 Unaccredited Investors. Notwithstanding anything contained herein to the contrary, for each such Share or In-the-Money Warrant Beneficially Owned by an Unaccredited Investor, if any, Parent and the Acquiror will cause to be deposited with (1) the Exchange Agent for further distribution to any such Stockholder or any holder of In-the-Money Warrants or (2) the Surviving Corporation for delivery to any such holder of In-the-Money Warrants through the Surviving Corporation's payroll system, in each case, in accordance with the Merger Consideration Schedule, an amount in cash equal to the Closing Date Per Share Equity Consideration that would be payable for each such Share or In-the-Money Warrant Beneficially Owned by each such Unaccredited Investor, in each case, determined as (i) the number of shares of Parent Common Stock to be issued as the Closing Date Per Share Equity Consideration in respect of such Share or In-the-Money Warrant Beneficially Owned multiplied by (ii) the Parent Share Value (the aggregate cash amount payable under this Section 2.18, the "Aggregate Unaccredited Cash Consideration"), in lieu of and not in addition to the Closing Date Per Share Equity Consideration that would be payable for each such Share or In-the-Money Warrant Beneficially Owned by each such Unaccredited Investor.

Section 2.19 Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Parent Common Stock occurring after the Agreement Date and prior to the Effective Time, all references herein to specified numbers of shares of any class or series affected thereby, and all calculations provided that are based upon numbers of shares of any class or series (or the Parent Share Value therefor) affected thereby, will be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the corresponding sections or subsections of the Disclosure Schedules attached hereto (collectively, the "Disclosure Schedules") (each of which shall qualify the specifically identified Sections or subsections hereof to which such Disclosure Schedule relates and incorporated by reference in any other Disclosure Schedule as though fully set forth in such Disclosure Schedule for which applicability of such information and disclosure is reasonably apparent on its face), the Company hereby represents and warrants to Parent, the Acquiror and Sub as follows:

Section 3.1 Organization and Qualification.

(a) Each of the Company and its Subsidiaries is (i) a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation as set forth in Schedule 3.1(a) of the Disclosure Schedules, and has full corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted and as currently proposed to be conducted and (ii) duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties and assets occupied, owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except for any such failures to be so qualified or licensed and in good standing that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Company and its Subsidiaries' certificates of incorporation, bylaws or similar organizational documents are in full force and effect. Neither the Company nor any of its Subsidiaries is in violation of any of the provisions of its certificate of incorporation, bylaws or equivalent organizational documents.

(c) The Company has heretofore furnished to the Acquiror a complete and correct copy of the certificate of incorporation and bylaws (or similar organizational documents), each as amended to date, of the Company and each of its Subsidiaries. The minute books of each of the Company and its Subsidiaries that have been made available for inspection by the Acquiror prior to the date hereof are true and complete.

Section 3.2 Authority.

(a) The Company has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party and, subject to the approval and adoption of this Agreement by Stockholders (i) representing a majority of the outstanding Shares and (ii) representing a majority of the outstanding shares of Company Preferred Stock, voting as a separate class (which the Company acknowledges is to occur by execution of the Stockholder Consent and Agreement as promptly as practicable following the execution and delivery of this Agreement), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement and each of the Ancillary Agreements to which the Company will be party and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by the Board of Directors of the Company. Except for the approval and adoption of this Agreement by the Stockholders pursuant to the Stockholder Consent and Agreement, no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery or performance of this Agreement or any Ancillary Agreement or to consummate the transactions contemplated hereby and thereby. The Stockholder Consent and Agreement provides that it will be irrevocable upon delivery. The affirmative vote of Stockholders (i) representing a majority of the outstanding Shares and (ii) representing a majority of the outstanding shares of Company Preferred Stock, voting as a separate class, are the only votes of the holders of any securities of the Company or any of its Subsidiaries necessary to approve and adopt this Agreement, the Merger and the other transactions contemplated hereby, and the execution of the Stockholder Consent and Agreement by Stockholders representing a majority of the outstanding Shares and a majority of the outstanding shares of Company Preferred Stock will constitute such approval. This Agreement has been, and upon their execution each of the Ancillary Agreements to which the Company will be a party will have been, duly executed and delivered by the Company and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary Agreements to which the Company will be a party will constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms except as limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws relating to creditors' rights generally or by general principles of equity, whether such enforceability is considered in a proceeding in equity or at law (the "Bankruptcy and Equity Exception").

(b) The Board of Directors of the Company, either by written consent or at a meeting duly called and held at which all directors of the Company were present, duly and unanimously adopted resolutions (i) determining that the terms of this Agreement, the Merger and the other transactions contemplated hereby are fair to and in the best interests of the Company's stockholders, (ii) approving and declaring advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directing that this Agreement be submitted to the stockholders of the Company for adoption and approval and (iv) resolving to recommend that the Company's stockholders vote in favor of the approval and adoption of this Agreement and the transactions contemplated hereby, including the Merger, which resolutions have not been subsequently rescinded, modified or withdrawn in any way.

Section 3.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by the Company of this Agreement and each of the Ancillary Agreements to which the Company will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws or equivalent organizational documents of the Company or any of its Subsidiaries;

(ii) conflict with or violate any Law applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, require any consent of any Person pursuant to, give to others any right of termination, amendment, modification, acceleration or cancellation of, allow the imposition of any fees or penalties, require the offering or making of any payment or redemption, give rise to any increased, guaranteed, accelerated or additional rights or entitlements of any Person or otherwise adversely affect any rights of the Company or any of its Subsidiaries under, or result in the creation of any Encumbrance on any property, asset or right of the Company or any of its Subsidiaries pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of their respective properties, assets or rights are bound or affected, except as, individually or in the aggregate, would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(b) Neither the Company nor any of its Subsidiaries is required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Company of this Agreement and each of the Ancillary Agreements to which the Company will be a party or the consummation of the transactions contemplated hereby or thereby or in order to prevent the termination of any right, privilege, license or qualification of the Company or any of its Subsidiaries, except for (i) any filings required to be made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and (iii) such filings as may be required by any applicable federal or state securities or "blue sky" laws.

(c) No "fair price," "interested shareholder," "business combination" or similar provision of any state takeover Law is, or at the Effective Time will be, applicable to the transactions contemplated by this Agreement or the Ancillary Agreements.

Section 3.4 Capitalization.

(a) Schedule 3.4(a)(i) of the Disclosure Schedules sets forth (i) as of the Agreement Date, a complete and accurate list of all authorized capital stock of the Company and all record and beneficial holders of the issued and outstanding capital stock of the Company, indicating the respective number of Shares held and (ii) as of immediately prior to the Effective Time (giving effect to the Preferred Stock Conversion), a complete and accurate list of all authorized capital stock of the Company and all record and beneficial holders of the issued and outstanding capital stock of the Company, indicating the respective number of Shares held. Schedule 3.4(a)(ii) of the Disclosure Schedules sets forth, for each Subsidiary of the Company, the amount of its authorized capital stock or other equity or ownership interests, the amount of its outstanding capital stock or other equity or ownership interests and the record and beneficial holders of its outstanding capital stock or other equity or ownership interests. Pursuant to the Stockholder Consent and Agreement, each issued and outstanding Share of the Company Preferred Stock will irrevocably elect to convert into Company Common Stock effective as of immediately prior to the Effective Time in accordance with the Company Charter as in effect on the date hereof.

(b) Schedule 3.4(b) of the Disclosure Schedules sets forth the names and addresses of record of all Persons holding any Company Option or Company Warrant, together with the number of Company Options or Company Warrants thus held, the number of Shares under such Company Option or Company Warrant, and the relevant exercise price(s), vesting schedule(s), conversion right(s), and expiration date(s) thereof.

(c) Except for the Shares and except as set forth in Schedule 3.4(a)(i) or (ii) or Schedule 3.4(b) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries has issued or agreed to issue any: (a) share of capital stock or other equity or ownership interest; (b) option, warrant or interest convertible into or exchangeable or exercisable for the purchase of shares of capital stock or other equity or ownership interests; (c) stock appreciation right, phantom stock, interest in the ownership or earnings of the Company or any of its Subsidiaries or other equity equivalent or equity-based award or right; or (d) bond, debenture or other Indebtedness having the right to vote or convertible or exchangeable for securities having the right to vote. Each outstanding share of capital stock or other equity or ownership interest of the Company and each of its Subsidiaries is duly authorized, validly issued, fully paid and nonassessable, and in the case of its Subsidiaries, each such share or other equity or ownership interest is owned by the Company or another Subsidiary, free and clear of any Encumbrance. All of the aforesaid shares or other equity or ownership interests have been offered, sold and delivered by the Company or a Subsidiary in compliance with all applicable federal and state securities laws. Except as set forth in Schedule 3.4(b) of the Disclosure Schedules and except for rights granted to the Acquiror and Sub under this Agreement, there are no outstanding obligations of the Company or any of its Subsidiaries to issue, sell or transfer or repurchase, redeem or otherwise acquire, or that relate to the holding, voting or disposition of, or that restrict the transfer of, the issued or unissued capital stock or other equity or ownership interests of the Company or any of its Subsidiaries. No shares of capital stock or other equity or ownership interests of the Company or any of its Subsidiaries have been issued in violation of any rights, agreements, arrangements or commitments under any provision of applicable Law, the certificate of incorporation or bylaws or equivalent organizational documents of the Company or any of its Subsidiaries or any Contract to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound. There are no voting trusts, proxies, or other agreements or understandings with respect to the equity securities of the Company or any of its Subsidiaries. Except as set forth in Schedule 3.4 of the Disclosure Schedules, there are no agreements relating to the registration, sale or transfer (including agreements relating to rights of first refusal, first offer, preemptive rights, co-sale rights or “drag-along” rights) of any equity interest in the Company or any of its Subsidiaries.

(d) The Merger Consideration Schedule is (i) true and complete and (ii) in accordance with the organizational documents of the Company and all applicable Laws.

Section 3.5 Equity Interests. Except for the Subsidiaries listed on Schedule 3.4(a)(ii) of the Disclosure Schedules, neither the Company nor any of its Subsidiaries directly or indirectly owns any equity, partnership, membership or similar interest in, or any interest convertible into, exercisable for the purchase of or exchangeable for any such equity, partnership, membership or similar interest in any Person. The Company is not under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution or other investment in, or assume any liability or obligation of, any Person.

Section 3.6 Financial Statements; No Undisclosed Liabilities.

(a) True and complete copies of the audited consolidated balance sheet of the Company and its Subsidiaries as at December 31, 2019, December 31, 2018, December 31, 2017, and the related audited consolidated statements of operations, stockholders' equity and cash flows of the Company and its Subsidiaries, together with all related notes and schedules thereto (collectively referred to as the "Financial Statements") and the unaudited consolidated balance sheet of the Company and its Subsidiaries as at February 28, 2021, and the related consolidated statements of operations, stockholders' equity and cash flows of the Company and its Subsidiaries, together with all related notes and schedules thereto (collectively referred to as the "Interim Financial Statements"), are attached hereto as Schedule 3.6(a) of the Disclosure Schedules. Each of the Financial Statements and the Interim Financial Statements (i) have been prepared in accordance with the books and records of the Company and its Subsidiaries; (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto); and (iii) fairly present, in all material respects, the consolidated financial position, results of operations and cash flows of the Company and its Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein and subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments that will not, individually or in the aggregate, be material.

(b) Except as and to the extent adequately accrued or reserved against in the unaudited consolidated balance sheet of the Company and its Subsidiaries as at December 31, 2020 attached as Schedule 3.6(b) of the Disclosure Schedules (such balance sheet, together with all related notes and schedules thereto, the "Balance Sheet"), neither the Company nor any of its Subsidiaries has any liability or obligation of any nature (including as a result of COVID-19 or any COVID-19 Measures), whether accrued, absolute, contingent or otherwise, whether known or unknown and whether or not required by GAAP to be reflected in a consolidated balance sheet of the Company and its Subsidiaries or disclosed in the notes thereto, except for (A) liabilities and obligations, incurred in the ordinary course of business consistent with past practice since the date of the Balance Sheet, that are not, individually or in the aggregate, material to the Company or any of its Subsidiaries (none of which results from or arises out of any breach of contract, breach of warranty, tort, infringement or violation of Law) or (B) are executory obligations under contracts incurred in the ordinary course of business consistent with past practice (none of which results from or arises out of any breach of contract, breach of warranty, tort, infringement or violation of Law).

(c) The books of account and financial records of the Company and its Subsidiaries are true and correct in all material respects and have been prepared and are maintained in accordance with customary accounting practice. The Company and its Subsidiaries maintain reasonably proper and reasonably adequate internal accounting controls. As of the date of this Agreement, (i) there are no significant deficiencies in the design or operation of the Company's internal controls over financial reporting which could adversely affect in any material respect the Company's ability to record, process, summarize and report financial data or material weaknesses in internal controls over financial reporting and (ii) there has been no fraud, whether or not material, that involved management or other employees of the Company who have a significant role in the Company's internal control over financial reporting.

(d) The accounts receivable of the Company and its Subsidiaries have or will have arisen from bona fide arm's length transactions in the ordinary course of business. There has not been any material adverse change in the collectability of such accounts receivable during the past 12 months. Schedule 3.6(d) of the Disclosure Schedules sets forth a list of all such accounts receivable that are more than 90 days past due as of the date of this Agreement, and of all such accounts receivable classified as doubtful accounts. The Company and its Subsidiaries do not have any accounts receivable from any Person which is an affiliate of the Company or its Subsidiaries or from any equity holder, director, member, manager, officer or employee of the Company, its Subsidiaries or any affiliates thereof. All accounts payable of the Company and its Subsidiaries have or will have arisen from bona fide arm's length transactions in the ordinary course of business. Since December 31, 2020, the Company and its Subsidiaries have paid all accounts payable in the ordinary course of its business. The Company and its Subsidiaries do not have any accounts payable to any Person that is an Affiliate of the Company or from any equity holder, director, member, manager, officer or employee of the Company or of any of its Affiliates.

(e) Estimated Net Working Capital, Estimated Indebtedness and Estimated Cash were calculated in accordance with the Applicable Accounting Principles.

Section 3.7 Absence of Certain Changes or Events. From the date of the Balance Sheet: (a) the Company and its Subsidiaries have conducted their businesses in the ordinary course consistent with past practice; (b) there has not been any Material Adverse Effect; (c) neither the Company nor any of its Subsidiaries has suffered any material loss, damage, destruction or other casualty affecting, any of its material properties or assets, whether or not covered by insurance; and (d) neither the Company nor any of its Subsidiaries has taken any action set forth below:

(i) declared, set aside, made or paid any non-Cash dividend or other distribution on or with respect to any of its capital stock or other equity or ownership interest;

(ii) authorized, or made any commitment with respect to, any single capital expenditure that is in excess of $25,000 or capital expenditures that are, in the aggregate, in excess of $200,000 for the Company or its Subsidiaries;

(iii) increased the compensation payable or to become payable or the benefits provided to its directors, managers, officers, employees, consultants or advisors except for normal merit and cost-of-living increases consistent with past practice in salaries or wages of employees of the Company or any of its Subsidiaries who are not directors or officers of the Company or any of its Subsidiaries and who receive less than $150,000 in total annual cash compensation from the Company or any of its Subsidiaries, or granted any severance or termination payment to, or paid, loaned or advanced any amount to, any director, manager, officer employee, consultant or advisor of the Company or any of its Subsidiaries, or established, adopted, entered into or amended any Plan (other than ordinary offer letters, employment agreements, contractor agreements, or consulting agreements entered into with employees or other service providers of the Company below the level of director, in the ordinary course of business and consistent with past practice), or made any declaration, payment or commitment or obligation of any kind for the payment (whether in cash, equity or otherwise) of a severance payment, termination payment, bonus or other additional salary or compensation to any such Person, except payments made pursuant to written agreements outstanding on the date hereof and disclosed in the Disclosure Schedules;

(iv) made any change in any method of accounting or accounting practice or policy, except as required by GAAP;

(v) made, revoked or modified any Tax election, settle or compromise any Tax liability or file any Tax Return other than on a basis consistent with past practice;

(vi) paid, discharged or satisfied any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of liabilities reflected or reserved against on the Balance Sheet or subsequently incurred in the ordinary course of business consistent with past practice;

(vii) cancelled, compromised, waived or released any right or claim other than in the ordinary course of business consistent with past practice;

(viii) accelerated the collection of or discounted any accounts receivable, delayed the payment of accounts payable or deferred expenses, reduced inventories or otherwise increased cash on hand, except in the ordinary course of business consistent with past practice;

(ix) commenced or settled any Action; or

(x) announced an intention, entered into any formal or informal agreement, or otherwise made a commitment to do any of the foregoing.

Section 3.8 Compliance with Law; Permits.

(a) Each of the Company and its Subsidiaries is and has been in the last three years in compliance in all material respects with all Laws applicable to it. None of the Company, any of its Subsidiaries or any of its or their executive officers has received any written notice, order, complaint or other communication during the past three years, nor, to the knowledge of the Company, is there any basis for any notice, order, complaint or other communication, from any Governmental Authority or any other Person that the Company or any of its Subsidiaries is not in compliance in any material respect with any Law applicable to it.

(b) Schedule 3.8 of the Disclosure Schedules sets forth a true and complete list of all material permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority necessary for each of the Company and its Subsidiaries to own, lease and operate its properties and to carry on its business in all material respects as currently conducted (the "Permits"). Each of the Company and its Subsidiaries is and has been in compliance in all material respects with all such Permits. No suspension, cancellation, modification, revocation or nonrenewal of any Permit is pending or, to the knowledge of the Company, threatened. The Company and its Subsidiaries will continue to have the use and benefit of all Permits following consummation of the transactions contemplated hereby. No Permit is held in the name of any employee, officer, director, stockholder, agent or otherwise on behalf of the Company or any of its Subsidiaries. The Permits are in full force and effect and constitute all Permits required to permit the Company and its Subsidiaries to operate or conduct their businesses or hold any interest in their properties or assets except for such Permits, individually or in the aggregate, that would not be material to the business, properties or assets.

Section 3.9 Litigation. Except as set forth on Schedule 3.9 of the Disclosure Schedules, there is no Action pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries, or any material property or asset of the Company or any of its Subsidiaries, or any of the directors or officers of the Company or any of its Subsidiaries in regards to their actions as such, nor, to the knowledge of the Company, is there any basis for any such Action. There is no Action pending or, to the knowledge of the Company, threatened seeking to prevent, hinder, modify, delay or challenge the transactions contemplated by this Agreement or the Ancillary Agreements. There is no outstanding order, writ, judgment, injunction, decree, determination or award of, or pending or, to the knowledge of the Company, threatened investigation by, any Governmental Authority relating to the Company, any of its Subsidiaries, any of their respective material properties or assets, any of their respective officers or directors, or the transactions contemplated by this Agreement or the Ancillary Agreements. There is no Action by the Company or any of its Subsidiaries pending, or which the Company or any of its Subsidiaries has commenced preparations to initiate, against any other Person.

Section 3.10 Employee Benefit Plans.

(a) Schedule 3.10(a) of the Disclosure Schedules sets forth a true and complete list of:

(i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA) and all bonus, stock option, stock purchase, restricted stock, equity or equity-based, incentive, deferred compensation, retention, change in control, retiree medical or life insurance, supplemental retirement, severance, fringe benefit or other benefit plans, programs or arrangements, and all employment, termination, severance or other contracts or agreements to which the Company or any of its Subsidiaries is a party, with respect to which the Company or any of its Subsidiaries has or could have any obligation or which are maintained, contributed to or sponsored by the Company or any of its Subsidiaries for the benefit of any current or former employee, officer or director of the Company or any of its Subsidiaries; provided, however, that, notwithstanding the foregoing, the Company shall not be required to list each individual offer letter or service provider agreement to the extent that such agreements are documented on a standard form of agreement listed on Schedule 3.10(a) of the Disclosure Schedules to which no material changes have been made and such standard form has been furnished to the Acquiror;

(ii) each employee benefit plan for which the Company or any of its Subsidiaries could incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated;

(iii) any plan in respect of which the Company or any of its Subsidiaries could incur liability under Section 4212(c) of ERISA; and

(iv) any Contracts between the Company or any of its Subsidiaries and any employee, officer or director of the Company or any of its Subsidiaries, relating to a sale of the Company or any of its Subsidiaries ((i) through (iv) collectively, the "Plans").

(b) Each Plan referred to in Section 3.10(a) is in writing. The Company has furnished to the Acquiror a true and complete copy of each such Plan and has delivered to the Acquiror a true and complete copy of each material document, if any, prepared in connection with each such Plan, including (i) a copy of each trust or other funding arrangement (to the extent applicable), (ii) each summary plan description and summary of material modifications, (iii) the two most recently filed Internal Revenue Service ("IRS") Form 5500, and (iv) the most recently received IRS determination letter for each such Plan. Neither the Company nor any of its Subsidiaries has any express or implied commitment (A) to create, incur liability with respect to or cause to exist any other employee benefit plan, program or arrangement, (B) to enter into any Contract to provide compensation or benefits to any individual or (C) to modify, change or terminate any Plan, other than with respect to a modification, change or termination required by ERISA or the Internal Revenue Code of 1986, as amended (the "Code").

(c) None of the Plans referred to in Section 3.10(a) is a multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA (a "Multiemployer Plan") or a single employer pension plan within the meaning of Section 4001(a)(15) of ERISA for which the Company or any of its Subsidiaries could incur liability under Section 4063 or 4064 of ERISA (a "Multiple Employer Plan") or a plan defined in Section 413(c) of the Code. None of such Plans: (i) provides for the payment of separation, severance, termination or similar-type benefits to any person; (ii) obligates the Company or any of its Subsidiaries to pay separation, severance, termination or similar-type benefits solely or partially as a result of the transactions contemplated by this Agreement or the Ancillary Agreements; or (iii) obligates the Company or any of its Subsidiaries to make any payment, triggers any acceleration of vesting or provides any benefit as a result of the transactions contemplated by this Agreement or the Ancillary Agreements. None of such Plans provides for or promises retiree medical, disability or life insurance benefits to any current or former employee, officer or director of the Company or any of its Subsidiaries. Each of the Plans is maintained in the United States and is subject only to the Laws of the United States or a political subdivision thereof.

(d) Each Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws, including ERISA and the Code. Each of the Company and its Subsidiaries has performed all material obligations required to be performed by it and is not in any respect in default under or in material violation under any Plan, nor does the Company have any knowledge of any such default or material violation by any other party to any Plan. No Action is pending or, to the knowledge of the Company, threatened with respect to any Plan, other than claims for benefits in the ordinary course, and no fact or event exists that would give rise to any such Action.

(e) Each Plan that is intended to be qualified under Section 401(a) of the Code or Section 401(k) of the Code has received a timely favorable determination letter from the IRS covering all of the provisions applicable to the Plan for which determination letters are currently available that the Plan is so qualified. Each trust established in connection with any Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt. No fact or event has occurred since the date of such determination letter or letters from the IRS that would adversely affect the qualified status of any such Plan or the exempt status of any such trust.

(f) There has not been any prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, with respect to any Plan. Neither the Company nor any of its Subsidiaries has incurred any liability under, arising out of or by operation of Title IV of ERISA, other than liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course, including any liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA or (ii) the withdrawal from any Multiemployer Plan or Multiple Employer Plan, and no fact or event exists that would give rise to any such liability.

(g) All contributions, premiums or payments required to be made with respect to any Plan have been made on or before their due dates. As of the Closing Date, no Plan that is subject to Title IV of ERISA will have any "unfunded benefit liability" within the meaning of Section 4001(a)(18) of ERISA.

(h) There are no material Actions or claims (other than routine claims for benefits) pending or, to the knowledge of the Company, threatened, anticipated or expected to be asserted with respect to any Plan or any related trust or other funding medium thereunder or with respect to the Company or any ERISA Affiliate as the sponsor or fiduciary thereof or with respect to any other fiduciary thereof.

(i) No Plan or any related trust or other funding medium thereunder or any fiduciary thereof is, to the knowledge of the Company, the subject of an audit, investigation or examination by any Governmental Authority.

(j) The Company and its ERISA Affiliates do not maintain any Plan which is a "group health plan," as such term is defined in Section 5000(b)(1) of the Code, that has not been administered and operated in compliance in all material respects with the applicable requirements of Section 601 of ERISA, Section 4980B(b) of the Code and the applicable provisions of the Health Insurance Portability and Accountability Act of 1986. The Company is not subject to any material liability, including additional contributions, fines, penalties or loss of tax deduction as a result of such administration and operation.

(k) With respect to each Plan that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(1) of the Code), (i) such plan or arrangement has been operated since January 1, 2005 in compliance in all material respects with Section 409A of the Code and all applicable IRS guidance promulgated thereunder to the extent such plan or arrangement is subject to Section 409A of the Code and so as to avoid any tax, interest or penalty thereunder; (ii) the document or documents that evidence each such plan or arrangement have materially conformed to the provisions of Section 409A of the Code and the final regulations under Section 409A of the Code since December 31, 2008; and (iii) as to any such plan or arrangement in existence prior to January 1, 2005 and not subject to Section 409A of the Code, has not been "materially modified" (within the meaning of IRS Notice 2005-1) at any time after October 3, 2004. No Company Option (whether currently outstanding or previously exercised) is, has been or would be, as applicable, subject to any tax, penalty or interest under Section 409A of the Code.

(l) The Company is not obligated to make any payments, including under any Plan, that reasonably could be expected to be "excess parachute payments" pursuant to Section 280G of the Code.

(m) Neither the Company nor any of its Subsidiaries has amended its Plans in response to COVID-19. Neither the Company nor any of its Subsidiaries has experienced a partial plan termination as the result of any employee reductions.

(n) Neither the Company nor any of its Subsidiaries is obligated to indemnify any party or provide any tax gross-ups with respect to taxes imposed under Section 409A or 4999 of the Code.

Section 3.11 Labor and Employment Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to any labor or collective bargaining Contract that pertains to employees of the Company or any of its Subsidiaries. There are no, and during the past three years have been no, organizing activities or collective bargaining arrangements that could affect the Company or any of its Subsidiaries pending or under discussion with any labor organization or group of employees of the Company or any of its Subsidiaries. There is no, and during the past three years there has been no, labor dispute, strike, controversy, slowdown, work stoppage or lockout pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries (including as a result of COVID-19 or COVID-19 Measures), nor is there any basis for any of the foregoing. Neither the Company nor any of its Subsidiaries has breached or otherwise failed to comply with the provisions of any collective bargaining or union Contract. There are no pending or, to the knowledge of the Company, threatened union grievances or union representation questions involving employees of the Company or any of its Subsidiaries.

(b) The Company is and during the past three years has been in compliance in all material respects with all applicable Laws respecting employment, including discrimination or harassment in employment, terms and conditions of employment, termination of employment, wages, overtime classification, hours, occupational safety and health, employee whistle-blowing, immigration, employee privacy, employment practices and classification of employees, consultants and independent contractors; provided, that the foregoing is without limitation to the provisions of subsections (g), (h) and (i) of this Section 3.11. No unfair labor practice or labor charge or complaint is pending or, to the knowledge of the Company, threatened with respect to the Company or any of its Subsidiaries before the National Labor Relations Board, the Equal Employment Opportunity Commission or any other Governmental Authority.

(c) The Company and each of its Subsidiaries have withheld and paid to the appropriate Governmental Authority or are holding for payment not yet due to such Governmental Authority all amounts required to be withheld from employees of the Company or any of its Subsidiaries and are not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any applicable Laws relating to the employment or labor. The Company and each of its Subsidiaries have paid in full to all their respective employees or adequately accrued in accordance with GAAP for all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees.

(d) Neither the Company nor any of its Subsidiaries is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Authority relating to employees or employment practices. None of the Company, any of its Subsidiaries or any of its or their executive officers has received within the past three years any notice of intent by any Governmental Authority responsible for the enforcement of labor or employment laws to conduct an investigation relating to the Company or any of its Subsidiaries and, to the knowledge of the Company, no such investigation is in progress.

(e) There has not been, and the Company does not anticipate or have any reason to believe that there will be, any adverse change in relations with employees as a result of the announcement of the transactions contemplated by this Agreement. To the knowledge of the Company, no current officer of the Company or any of its Subsidiaries currently intends, or is currently expected, to terminate his or her employment relationship with such entity promptly following the consummation of the transactions contemplated hereby.

(f) During the last three years (i) no allegations of workplace sexual harassment, discrimination or other misconduct have been made, initiated, filed or, to the knowledge of the Company, threatened against the Company, any of its Subsidiaries or any of their respective employees in their capacities as such, (ii) to the knowledge of the Company, no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) neither the Company nor any of its Subsidiaries have entered into any settlement agreement related to allegations of sexual harassment, discrimination or other misconduct by any of their employees.

(g) Except as set forth on Schedule 3.11(g) of the Disclosure Schedules, since January 1, 2020, as related to COVID-19, neither the Company nor any of its Subsidiaries has (i) taken any material action with respect to any employees of the Company or its Subsidiaries, including implementing workforce reductions, layoffs, furloughs or material changes to compensation, benefits or working schedules, (ii) applied for or received loans or payments under the CARES Act or any other COVID-19 Measures, or claimed any tax credits or deferred any Taxes thereunder or (iii) experienced any material employment-related liability.

(h) The Company and its Subsidiaries are in compliance in all material respects with all COVID-19 Measures applicable to any location in which the Company or its Subsidiaries operate. To the extent the Company or any of its Subsidiaries is requiring employees to perform in-person work in any locations subject to a health and safety order, the Company's and its Subsidiaries' requirements for in-person services meet the standards set forth in the current order in all material respects. To the extent the Company or any of its Subsidiaries is aware of any employees that have tested positive for COVID-19, the Company or such Subsidiary has taken all necessary precautions with respect to such employee and his/her suspected close contacts required by any applicable federal, state, and local health authorities. The Company and its Subsidiaries have also documented any work-related injury and illness in compliance in all material respects with OSHA.

(i) Neither the officers of the Company nor any of its Subsidiaries have received any complaints or concerns (i) from employees regarding leaves of absence, paid sick time, or similar matters related to COVID-19, (ii) regarding the Company's or any of its Subsidiaries' reporting, or failure to report, to employees, contractors, customers, vendors or the public, the presence of employees or contractors who have tested positive for, or exhibited symptoms of, COVID-19, or other potential means of exposure to COVID-19 or (iii) alleging the Company or any of its Subsidiaries failed to provide a safe working environment, appropriate equipment or accommodation in relation to COVID-19.

Section 3.12 Title to, Sufficiency and Condition of Assets.

(a) The Company and its Subsidiaries have good and valid title to or a valid leasehold interest in all of their assets, including all of the assets reflected on the Balance Sheet or acquired in the ordinary course of business since the date of the Balance Sheet, except those sold or otherwise disposed of for fair value since the date of the Balance Sheet in the ordinary course of business consistent with past practice and as would not, individually or in the aggregate, be material to the Company and its Subsidiaries, taken as a whole. The assets owned or leased by the Company and its Subsidiaries constitute all of the assets necessary for the Company and its Subsidiaries to carry on their respective businesses as currently conducted. None of the assets owned or leased by the Company or any of its Subsidiaries is subject to any Encumbrance, other than (i) liens for Taxes not yet due and payable and for which adequate reserves have been established in accordance with GAAP, (ii) mechanics', workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business of the Company or such Subsidiary consistent with past practice and (iii) any such matters of record, Encumbrances and other imperfections of title that do not, individually or in the aggregate, materially impair the continued ownership, use and operation of the assets to which they relate in the business of the Company and its Subsidiaries as currently conducted (collectively, "Permitted Encumbrances").

(b) All tangible assets owned or leased by the Company or its Subsidiaries have been maintained in all material respects in accordance with generally accepted industry practice, are in all material respects in good operating condition and repair, ordinary wear and tear excepted, and are adequate for the uses to which they are being put.

Section 3.13 Real Property.

(a) Schedule 3.13(a) of the Disclosure Schedules sets forth a true and complete list of all Owned Real Property and all Leased Real Property. Each of the Company and its Subsidiaries has (i) good and marketable title in fee simple to all Owned Real Property and (ii) good and marketable leasehold title to all Leased Real Property, in each case, free and clear of all Encumbrances except Permitted Encumbrances. No parcel of Owned Real Property or Leased Real Property is subject to any governmental decree or order to be sold or is being condemned, expropriated, re-zoned or otherwise taken by any public authority with or without payment of compensation therefore, nor, to the knowledge of the Company, has any such condemnation, expropriation or taking been proposed. All leases of Leased Real Property and all amendments and modifications thereto are in full force and effect, and there exists no default under any such lease by the Company, any of its Subsidiaries or any other party thereto, nor any event which, with notice or lapse of time or both, would constitute a default thereunder by the Company, any of its Subsidiaries or any other party thereto. All leases of Leased Real Property shall remain valid and binding in accordance with their terms following the Closing.

(b) There are no contractual or legal restrictions that preclude or restrict the ability to use any Owned Real Property or Leased Real Property by the Company or any of its Subsidiaries for the current use of such real property. There are no material latent defects or material adverse physical conditions affecting the Owned Real Property or Leased Real Property. All plants, warehouses, distribution centers, structures and other buildings on the Owned Real Property or Leased Real Property are adequately maintained and are in good operating condition and repair for the requirements of the business of the Company and its Subsidiaries as currently conducted.

Section 3.14 Intellectual Property.

(a) Schedule 3.14 of the Disclosure Schedules sets forth a true and complete list of all registered Marks, issued Patents and registered Copyrights, including any pending applications to register any of the foregoing, owned (in whole or in part) by or exclusively licensed to the Company or any of its Subsidiaries, identifying for each whether it is owned by or exclusively licensed to the Company or the relevant Subsidiary.

(b) No registered Mark identified on Schedule 3.14 of the Disclosure Schedules has been or is now involved in any opposition or cancellation proceeding and no such proceeding is or has been threatened with respect to any of such Marks. No Patent identified on Schedule 3.14 of the Disclosure Schedules has been or is now involved in any interference, reissue or reexamination proceeding and to the knowledge of the Company no such proceeding is or has been threatened with respect thereto any of such Patents.

(c) The Company or its Subsidiaries exclusively own, free and clear of Encumbrances (other than Permitted Encumbrances), all Intellectual Property identified on Schedule 3.14 of the Disclosure Schedules and all other Intellectual Property owned by the Company or its Subsidiaries (collectively, the "Business IP"). Neither the Company nor any of its Subsidiaries has received any written notice or claim challenging the Company's, or the relevant Subsidiaries', ownership of any of the Business IP, nor to the knowledge of the Company is there a reasonable basis for any claim that the Company, or the relevant Subsidiary, does not so own any of such Intellectual Property.

(d) Each of the Company and its Subsidiaries has taken commercially reasonable steps in accordance with standard industry practices to protect its rights in the Business IP and has maintained the confidentiality of all information that constitutes or constituted a Trade Secret of the Company or any of its Subsidiaries, except where the Company has elected to otherwise disclose such information in its reasonable business judgment. All current and former employees, consultants and contractors of the Company or any of its Subsidiaries have executed and delivered proprietary information, confidentiality and assignment agreements substantially in the Company's standard forms or, with respect to consultants or contractors of the Company or any of its Subsidiaries, agreements with substantially equivalent provisions regarding, as the case may be, the assignment of intellectual property to the Company, or the applicable Subsidiary, and confidentiality obligations, in each case, to the extent such person developed Business IP or had access to Trade Secrets of the Company.

(e) All registered Marks, issued Patents and registered Copyrights identified on Schedule 3.14 of the Disclosure Schedules ("Company Registered IP") are subsisting and, to the knowledge of the Company, valid and enforceable, and neither the Company nor any of its Subsidiaries has received any written notice or claim challenging the validity or enforceability of any Company Registered IP or alleging any misuse of such Company Registered IP. Neither the Company nor any of its Subsidiaries has taken any action or failed to take any action that could reasonably be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation or unenforceability of any of the Company Registered IP (including the failure to pay any filing, examination, issuance, post registration and maintenance fees, annuities and the like and the failure to disclose any known material prior art in connection with the prosecution of patent applications).

(f) The development, manufacture, sale, distribution or other commercial exploitation of products, and the provision of any services, by or on behalf of the Company or any of its Subsidiaries, and all of the other activities or operations of the Company or any of its Subsidiaries, do not infringe, misappropriate, violate, dilute or otherwise constitute the unauthorized use of, and have not infringed upon, misappropriated, violated, diluted or constituted the unauthorized use of, any Intellectual Property of any third party, and neither the Company nor any of its Subsidiaries has received any written notice or claim asserting or suggesting that any such infringement, misappropriation, violation, dilution or unauthorized use is or may be occurring or has or may have occurred, nor to the knowledge of the Company, is there a reasonable basis therefor. None of the Business IP is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use or licensing thereof by the Company or its Subsidiaries. To the knowledge of the Company, no third party is misappropriating, infringing, diluting or violating any Intellectual Property owned by or exclusively licensed to the Company or any of its Subsidiaries in a material manner.

(g) Neither the Company nor any of its Subsidiaries has transferred ownership of, or granted any exclusive license with respect to, any material Intellectual Property. Upon the consummation of the Closing, the Company's and its Subsidiaries' rights in the Intellectual Property used for the development, marketing and sale of the products and services of the Company and its Subsidiaries, and the conduct of the Company's and its Subsidiaries' businesses as they are currently conducted, shall be exercisable by the Company or applicable Subsidiary to the same extent as by the Company and its Subsidiaries prior to the Closing, except where the inability to so exercise Intellectual Property licensed to the Company or any Subsidiary by a third party, individually or in the aggregate, would not be material to the business of the Company and its Subsidiaries. No loss or expiration of any of the material Intellectual Property used by the Company or any of its Subsidiaries in the conduct of its business is threatened or pending.

(h) The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements, and the consummation of the transactions contemplated hereby, will not give rise to any right of any third party to terminate or re-price or otherwise modify any of the Company's or any of its Subsidiaries' rights or obligations under any agreement under which any right or license of or under Intellectual Property is granted to or by the Company or any of its Subsidiaries except as would not, individually or in the aggregate, be material to the business of the Company and its Subsidiaries.

Section 3.15 Taxes.

(a) The Company and its Subsidiaries have duly and timely filed all income and other material Tax Returns required to be filed by or with respect to them, either separately or as a member of an Affiliated Group, under applicable Laws, and all such Tax Returns are true, complete and correct in all material respects and have been prepared in compliance with all applicable Laws. The Company and its Subsidiaries have made available to the Acquiror correct and complete copies of all Tax Returns for all Tax periods beginning on or after January 1, 2017.

(b) The Company and its Subsidiaries have timely paid all income and other material Taxes, including all installments on account of Taxes for the current year, due and owing by them (whether or not such Taxes are related to, shown on or required to be shown on any Tax Return), including installments or prepayments of Taxes which are required to have been paid to any Governmental Authority pursuant to applicable law, and have timely withheld or deducted and paid over to the appropriate Governmental Authority all material Taxes that they are required to withhold or deduct from amounts paid or owing or deemed paid or owing or benefits given to any employee, stockholder, creditor or other third party.

(c) The Company and its Subsidiaries have not (i) waived any statute of limitations with respect to any Taxes of the Company or its Subsidiaries or agreed to any extension of time for filing any Tax Return of the Company or its Subsidiaries (excluding, for this purpose, automatic extensions of time granted in the ordinary course) or (ii) consented to any extension of time with respect to any Tax assessment or deficiency of the Company or its Subsidiaries, which waiver or extension of time is currently outstanding.

(d) No Tax audits or assessments or administrative or judicial proceedings are pending or are threatened in writing with respect to the Company or its Subsidiaries, and there are no matters under discussion, audit or appeal with any Governmental Authority with respect to Taxes of the Company or its Subsidiaries.

(e) There are no liens, other than Permitted Encumbrances, on any of the assets of the Company or its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

(f) The Company and its Subsidiaries are not required to file Tax Returns in any jurisdictions in which they have not filed, and no written claim has ever been made by a Governmental Authority in a jurisdiction where the Company or any of its Subsidiaries do not file Tax Returns that the Company or any of its Subsidiaries are or may be subject to taxation by that jurisdiction, which claim has not been resolved. The Company is not and has not been a resident for Tax purposes in any jurisdiction outside of the United States, and does not have, any branch, permanent establishment or other fixed place of business in any such jurisdiction. The Company's Subsidiaries are not and have not been a resident for Tax purposes in any jurisdiction other than their respective countries of incorporation, and do not have any branch, permanent establishment or other fixed place of business in any such jurisdiction.

(g) Neither the Company nor any of its Subsidiaries (i) has been a member of an Affiliated Group, (ii) has any liability for the Taxes of any Person other than itself under Section 1.1502-6 of the Treasury Regulations (or any similar provision of U.S. state or local or non-U.S. Law), as a transferee or successor, by contract or otherwise, (iii) is party to or bound by and has any obligations under any Tax allocation, Tax sharing, Tax indemnification, Tax receivable or other similar contract (other than any such contract entered into in the ordinary course and the principal purpose of which is not the allocation or sharing of Taxes), and no Tax will arise to the Company or any of its Subsidiaries as a result of the Company or any of its Subsidiaries ceasing to be a member of any Affiliated Group in connection with this Agreement, and (iv) is party to any contract or arrangement to pay, indemnify or make any payment with respect to any Tax liabilities of any stockholder, member, manager, director, officer or other employee or contractor of the Company or its Subsidiary.

(h) Neither the Company nor any of its Subsidiaries have distributed stock of another Person, and has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code section 355.

(i) Neither the Company nor any of its Subsidiaries have engaged in any "listed transaction" within the meaning of Code sections 6111 and 6112 or any similar provisions of U.S. state or local or non-U.S. Law or any "tax shelter" within the meaning of Section 6662 of the Code or the Treasury Regulations promulgated thereunder (or any similar provision of applicable U.S. state or local or non-U.S. Law).

(j) Neither the Company nor any of its Subsidiaries have requested or received a written ruling from any Governmental Authority or signed any binding agreement with any Governmental Authority or made or filed any election, designation or similar filing with respect to Taxes of the Company. The amount of Tax chargeable on the Company and its Subsidiaries does not depend, and has not depended, on any concession, agreement or other formal or informal arrangement with any Governmental Authority.

(k) The Pre-Closing Taxes of the Company and its Subsidiaries (i) did not, as of the date of the Balance Sheet, exceed the accrued liability for Taxes (other than any accrued liability for deferred Taxes established solely to reflect timing differences between income for financial statement purposes and income for Tax purposes) included in the Financial Statements and (ii) will not exceed that accrued liability as adjusted for operations and transactions (other than the transactions contemplated by this Agreement) through the Closing Date in accordance with the past custom and practice of the Company and its Subsidiaries in filing their Tax Returns.

(l) Neither the Company nor any of its Subsidiaries (nor the Acquiror by reason of its ownership of the Company or any of its Subsidiaries) will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date, including as a result of any (i) change in method of accounting for a taxable period made prior to the Closing, (ii) "closing agreement" as described in Code section 7121 (or any corresponding or similar provision of state, local or non-U.S. income Tax Law) executed on or prior to the Closing Date, (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Code section 1502 (or any corresponding or similar provision of state, local or non-U.S. income Tax Law), (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) prepaid amount received on or prior to the Closing Date or (vi) election under Code section 108(i) (or any corresponding provision of state, local or non-U.S. Law) (vii) "global intangible low-taxed income" within the meaning of Section 951A of the Code (or any corresponding or similar provision of Law) of the Company or its Subsidiaries attributable to a taxable period (or portion thereof) ending on or prior to the Closing Date, or (viii) a COVID-19 Financial Assistance Program.

(m) Neither the Company nor any Subsidiaries will be required to pay any Tax after the Closing Date as a result of an election made pursuant to Section 965(h) of the Code.

(n) Neither the Company nor any Subsidiary is, or at any time has been, subject to (i) the dual consolidated loss provisions of Section 1503(d) of the Code, (ii) the overall foreign loss provisions of Section 904(f) of the Code or (iii) the recharacterization provisions of Section 952(c)(2) of the Code.

(o) The assets of the Company and its Subsidiaries are not, and have never been, U.S. real property interests within the meaning of Code section 897. Neither the Company nor any of its Subsidiaries is or has been a "U.S. real property holding corporation" within the meaning of Code section 897.

(p) No Person holds Shares or Company Options that are or on issuance were non-transferable or subject to a substantial risk of forfeiture within the meaning of Code section 83 with respect to which a valid election under Code section 83(b) has not been made.

(q) For U.S. federal, and, if applicable, state and local, income tax purposes, (i) the Company is, and has been since its formation, properly classified as a corporation that is a "C corporation" and (ii) the Company is not and has never been a partner in a partnership or a party to any arrangement that could be classified as a partnership.

(r) Schedule 3.15(r) of the Disclosure Schedules sets forth a list of the entity classification of each Subsidiary for U.S. federal income tax purposes, and, unless otherwise noted, each entity has had such classification at all times since its incorporation or formation, as applicable.

(s) The prices and terms for the provision of any property or services undertaken among the Company and its Subsidiaries are arm's length for purposes of the relevant transfer pricing Laws in all material respects, and all related documentation required by such Laws has been timely prepared or obtained and, if necessary, retained.

(t) Each of the Company and its Subsidiaries has duly and timely collected all material amounts on account of any Taxes, including sales, use or transfer taxes, goods and services, value added, harmonized sales and state, provincial or territorial sales Taxes, required by applicable Laws to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such amounts required by Law to be remitted by it.

(u) Each of the Company and its Subsidiaries has provided reasonable documentation or other proof of compliance with any applicable Tax incentive, Tax holiday or other similar incentives, and such compliance shall not be negatively affected by the transactions contemplated by this Agreement.

(v) All information submitted to a lender, the Small Business Administration or any other Governmental Authority by the Company or any of its Subsidiaries in connection with an application for any PPP Loan or other similar loan pursuant to the CARES Act or other similar sources of federal, state and local COVID-19 related relief was true and correct at the time of submission, including any and all certifications made by the Company or any of its Subsidiaries on any application form submitted in connection therewith.

(w) None of the Companies nor any of the Subsidiaries has (i) deferred the amount of the employer's share of any "applicable employment taxes" under Section 2302 of the CARES Act, (ii) deferred any payroll tax obligations (including those imposed by Sections 3101(a) and 3201 of the Code) (for example, by a failure to timely withhold, deposit or remit such amounts in accordance with the applicable provisions of the Code and the Treasury Regulations promulgated thereunder) pursuant to or in connection with any U.S. presidential memorandum or executive order or any COVID-19 Financial Assistance Program, or (iii) utilized available Tax credits under Sections 7001 through 7005 of the Families First Act and Section 2301 of the CARES Act.

Section 3.16 Environmental Matters. Each of the Company and its Subsidiary (i) has complied in all material respects with all Environmental Laws; (ii) has not received any written notice of any alleged claim, complaint, violation of or liability under any Environmental Law (including any claim or complaint from any employee alleging exposure to Hazardous Materials); (iii) has not disposed of, emitted, discharged, handled, stored, transported, used or released any Hazardous Materials, or arranged for the disposal, discharge, storage or release of any Hazardous Materials; (iv) has not entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of Environmental Laws or the Hazardous Materials related activities of the Company or its Subsidiary; and (v) has delivered to the Acquiror or made available for inspection by the Acquiror and its agents, representatives and employees all records in the possession or control of the Company or its Subsidiary concerning the Hazardous Materials activities of the Company or its Subsidiary and all environmental audits and environmental assessments of any facility owned, leased or used at any time by the Company or its Subsidiary conducted at the request of, or otherwise in the possession or control of the Company or its Subsidiary. There are no Hazardous Materials in, on or under any properties owned, leased or used at any time by the Company or its Subsidiary which could give rise to any material liability or corrective or remedial obligation of the Company or its Subsidiary under any Environmental Laws.

Section 3.17 Material Contracts.

(a) Except as set forth in Schedule 3.17(a) of the Disclosure Schedules (by applicable subsection referenced below in this Section 3.17(a)), neither the Company nor any of its Subsidiaries is a party to or is bound by any Contract of the following nature as of the Agreement Date (such Contracts as are required to be set forth in Schedule 3.17(a) of the Disclosure Schedules being "Material Contracts"):

(i) any continuing Contract (A) permitting another Person to sell, resell or take orders for the Company Products, including value added, resellers, and managed service providers, (B) pursuant to which Company or any of its Subsidiaries licenses Company Products to a Significant Customer; and (C) for the provision of products or services to the Company or any of its Subsidiaries by a Significant Supplier;

(ii) any Contract relating to or evidencing Indebtedness;

(iii) any Contract pursuant to which the Company or any of its Subsidiaries has provided funds to or made any loan, capital contribution or other investment in, or assumed any liability or obligation of, any Person, including take-or-pay contracts or keepwell agreements;

(iv) any Contract with any Governmental Authority;

(v) any Contract with any Related Party of the Company or any of its Subsidiaries (except with respect to any offer letters, employment agreements, contractor agreements, and consulting agreements on the Company's standard form of agreements (as made available to the Acquiror));

(vi) any employment or consulting Contract, other than Contracts for employment covered in clause (v), that involves an aggregate future or potential liability in excess of $150,000;

(vii) any Contract with respect to which the Company has any outstanding liabilities to grant any severance or termination pay or benefits (in cash or otherwise) to any employee or individual consultant, or any contractor, consulting or sales agreement, contract or commitment with a firm or other organization;

(viii) any Contract or plan, including any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement (either alone or upon the occurrence of any additional subsequent events) or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(ix) any Contract that limits, or purports to limit, the ability of the Company or any of its Subsidiaries to compete in any line of business or with any Person or in any geographic area or during any period of time, or that restricts the right of the Company and its Subsidiaries to sell to or purchase from any Person or to hire any Person, or that grants the other party or any third person "most favored nation" status or any type of special discount rights;

(x) any Contract pursuant to which the Company or any of its Subsidiaries is the lessee or lessor of, or holds, uses, or makes available for use to any Person (other than the Company or a Subsidiary thereof), (A) any real property or (B) any tangible personal property and, in the case of clause (B), that involves an aggregate future or potential liability or receivable, as the case may be, in excess of $50,000 annually;

(xi) any purchase order, contract or other commitment obligating the Company or its Subsidiary to purchase materials or services at a cost in excess of $50,000 on an annual basis or $250,000 in the aggregate;

(xii) any Contract relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company or any of its Subsidiaries' businesses, consistent with past practices;

(xiii) any Contract of indemnification or guaranty by the Company or any of its Subsidiaries, but excluding provisions of indemnification or guaranty that are contained in the Company's written agreements with its customers that have been entered into in the ordinary course of business, consistent with past practices, substantially in the Company's standard form of customer agreement, and provisions of indemnification or guaranty contained in their written agreements with their services providers or vendors entered into in the ordinary course of business, consistent with past practices;

(xiv) any Contract pursuant to which Technology or Intellectual Property is licensed to the Company or any Subsidiary, or licensed by the Company or any Subsidiary to another Person, in each case other than any (A) in-bound licenses for third party Technology or Intellectual Property licensed to the Company that is generally, commercially available Software or Technology service with a replacement cost or an aggregate annual fee, as applicable, of less than $50,000; (B) licenses to open source software; (C) non-disclosure and confidentiality agreements entered into by the Company or any of its Subsidiaries in the ordinary course of business; (D) employee invention assignment agreements and consulting agreements entered into by the Company or any of its Subsidiaries in the ordinary course of business; and (E) out-bound licenses and other Contracts with suppliers, service providers, customers and end-users entered into by the Company or any of its Subsidiaries in the ordinary course of business;

(xv) any joint venture or partnership, merger, asset or stock purchase or divestiture Contract relating to the Company or any of its Subsidiaries;

(xvi) any Contract relating to settlement of any administrative or judicial proceedings within the past three years or pursuant to which there are any material continuing obligations; and

(xvii) any other Contract, whether or not made in the ordinary course of business that (A) involves a future or potential payable or receivable, as the case may be, in excess of $100,000 on an annual basis or in excess of $250,000 over the current Contract term (except for offer letters, employment agreements, contractor agreements, and consulting agreements on the Company's standard form of agreements (as made available to the Acquiror)), or (B) is material to the business, operations, assets, financial condition, results of operations or prospects of the Company and its Subsidiaries, taken as a whole.

(b) Each Material Contract is a legal, valid, binding and enforceable agreement and is in full force and effect and will continue to be in full force and effect on identical terms immediately following the Closing Date. None of the Company or any of its Subsidiaries or, to the knowledge of the Company, any other party is in breach or violation of, or (with or without notice or lapse of time or both) default under, any Material Contract, nor has the Company or any of its Subsidiaries received any claim of any such breach, violation or default; provided, that the foregoing is without limitation to the provisions of subsection (c) of this Section 3.17. The Company has delivered or made available to the Acquiror true and complete copies of all Material Contracts, including any amendments thereto.

(c) Neither the Company nor any of its Subsidiaries has received any written notices seeking (i) to excuse a third party's non-performance, or delay a third party's performance, under existing Material Contracts due to interruptions caused by COVID-19 (through invocation of force majeure or similar provisions, or otherwise) or (ii) to modify any existing contractual relationships due to COVID-19.

Section 3.18 Affiliate Interests and Transactions. No Related Party of the Company or any of its Subsidiaries: (i) owns or has owned, directly or indirectly, any equity or other financial or voting interest in any competitor, supplier, licensor, lessor, distributor, independent contractor or customer of the Company or any of its Subsidiaries or their business; (ii) owns or has owned, directly or indirectly, or has or has had any interest in any property (real or personal, tangible or intangible) that the Company or any of its Subsidiaries uses or has used in or pertaining to the business of the Company or any of its Subsidiaries; (iii) has or has had any business dealings or a financial interest in any transaction with the Company or any of its Subsidiaries or involving any assets or property of the Company or any of its Subsidiaries, other than business dealings or transactions conducted in the ordinary course of business at prevailing market prices and on prevailing market terms; or (iv) is or has been employed by the Company or any of its Subsidiaries.

Section 3.19 Insurance. Schedule 3.19 of the Disclosure Schedules sets forth a true and complete list of all casualty, directors and officers liability, general liability, product liability and all other types of insurance policies maintained with respect to the Company or any of its Subsidiaries, together with the carriers and liability limits for each such policy. All such policies are in full force and effect and no application therefor included a material misstatement or omission. All premiums with respect thereto have been paid to the extent due. Neither the Company nor any of its Subsidiaries has received written notice of, nor to the knowledge of the Company is there threatened, any cancellation, termination, reduction of coverage or material premium increases with respect to any such policy. No claim is currently pending under any such policy involving an amount in excess of $10,000. Schedule 3.19 of the Disclosure Schedules identifies which insurance policies are "occurrence" or "claims made" and which Person is the policy holder. All material insurable risks in respect of the business and assets of the Company and its Subsidiaries are covered by such insurance policies, and the types and amounts of coverage provided therein are usual and customary in the context of the business and operations in which the Company and its Subsidiaries are engaged. The activities and operations of the Company and its Subsidiaries have been conducted in a manner so as to conform in all material respects to all applicable provisions of such insurance policies. The consummation of the transactions contemplated by this Agreement and the Ancillary Agreements will not cause a cancellation or reduction in the coverage of such policies. Neither the Company nor any of its Subsidiaries has made any claims on existing insurance policies, including business interruption insurance, as a result of COVID-19.

Section 3.20 Privacy and Security.

(a) The Company and each of its Subsidiaries complies (and, as required by Privacy Laws, requires and monitors the compliance of applicable third parties that process Personal Information on behalf of the Company or a Subsidiary) in all material respects with all applicable U.S., state, foreign and multinational Laws (including Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 (General Data Protection Regulation), the Computer Fraud and Abuse Act (and all state and foreign Laws similar thereto), the Children's Online Privacy Protection Act and the California Consumer Privacy Act) relating to privacy or data security, and binding industry standards and self-governing rules and policies and the Company's and each of its Subsidiaries' own published, posted and internal agreements and policies (which are in conformance with industry practice for similarly-sized companies performing similar services) (all of the foregoing collectively, "Privacy Laws") with respect to, if and as applicable: (i) personally identifiable information (including name, address, telephone number, electronic mail address, social security number, bank account number or credit card number), sensitive personal information and any special categories of personal information regulated thereunder or covered thereby ("Personal Information") (including such Personal Information of visitors who use the Company's or its Subsidiaries' respective Websites, suppliers, clients and distributors), whether any of same is accessed or used by the Company or its Subsidiaries or any of their respective business partners;; (ii) spyware and adware; (iii) the procurement or placement of advertising from or with Persons and Websites to the extent required by Privacy Laws; (iv) the use of Internet searches associated with or using particular words or terms to the extent such data is Personal Information; and (v) the sending of solicited or unsolicited electronic mail messages.

(b) The Company and its Subsidiaries post all policies with respect to the matters set forth in Section 3.20(a) on their respective Websites in conformance with and as required by Privacy Laws.

(c) To the Company's knowledge: (i) the advertisers and other Persons with which the Company or its Subsidiaries have contractual relationships have not breached any agreements or any Privacy Laws pertaining to Personal Information processed on behalf of the Company (including Privacy Laws regarding spyware and adware), (ii) neither the Company nor any of its Subsidiaries serves advertisements into advertising inventory created by downloadable Software that launches without a user's express activation, and (iii) neither the Company nor any of its Subsidiaries has received (and does not have knowledge of) a material volume of consumer complaints relative to Software downloads that resulted in the installation of the Company's or any of its Subsidiaries' respective tracking technologies.

(d) The Company and its Subsidiaries take commercially reasonable steps designed to protect the operation, confidentiality, integrity and security of their respective Software, Systems and Websites and all Personal Information stored or contained therein or transmitted thereby against any unauthorized or improper use, access, transmittal, interruption, modification or corruption, and there have been no breaches of same. Without limiting the generality of the foregoing, to the extent required by Privacy Laws, each of the Company and its Subsidiaries (i) uses encryption technology of at least 128-bit and (ii) has implemented a comprehensive security plan that is designed to (A) identify internal and external risks to the security of the Company's or its Subsidiaries' confidential information and Personal Information and (B) implement, monitor and improve safeguards to control those risks.

(e) To the extent applicable, each of the Company and its Subsidiaries, and each of their respective businesses, products and services, is in compliance in all material respects with and has at all times materially complied with all applicable requirements contained in the Payment Card Industry Data Security Standards ("PCI DSS") relating to "cardholder data" (as such term is defined in the PCI DSS, as amended from time to time) with respect to all (if any) such cardholder data that has come into its possession. Neither the Company nor any of its Subsidiaries has received written notice that it is in non-compliance with any PCI DSS standards. The Company has never experienced a security breach involving any such cardholder data. No written claims have been asserted or, to the knowledge of the Company, are threatened against the Company or any of its Subsidiaries by any Person alleging a violation of any of the foregoing and there have been no known incidents of breach of any of the foregoing by the Company or any of its Subsidiaries.

Section 3.21 Customers and Suppliers.

(a) Schedule 3.21(a) of the Disclosure Schedules sets forth a true and complete list of the top 25 customers of the Company and its Subsidiaries during the 12 months ended December 31, 2020 (a "Significant Customer"). The Company has not received any written notice pursuant to which any Significant Customer nor, to the knowledge of the Company, has any reason to believe that any Significant Customers (A) has ceased or substantially reduced, or will cease or substantially reduce, use of products or services of the Company or (B) has sought, or is seeking, to reduce the price it will pay for the services of the Company. No Significant Customer has otherwise threatened in writing, or, to the knowledge of the Company, orally, to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

(b) Schedule 3.21(b) of the Disclosure Schedules sets forth a true and complete list of the top 25 suppliers of the Company from which the Company and its Subsidiaries ordered products or services during the 12 months ended December 31, 2020 (a "Significant Supplier"). The Company has not received any written notice nor, to the knowledge of the Company, has any reason to believe that there has been any material adverse change in the price of such supplies or services provided by any such Significant Supplier, or that any such Significant Supplier will not sell supplies or services to the Company at any time after the Closing Date on terms and conditions substantially the same as those used in its current sales to the Company, subject to general and customary price increases. No Significant Supplier has otherwise threatened in writing, or, to the knowledge of the Company, orally, to take any action described in the preceding sentence as a result of the consummation of the transactions contemplated by this Agreement.

Section 3.22 Bank Accounts, Letters of Credit and Powers of Attorney. Schedule 3.22 of the Disclosure Schedules lists (a) all bank accounts, lock boxes and safe deposit boxes relating to the business and operations of the Company or its Subsidiaries (including the name of the bank or other institution where such account or box is located and the name of each authorized signatory thereto), (b) all outstanding letters of credit issued by financial institutions for the account of the Company or its Subsidiaries (setting forth, in each case, the financial institution issuing such letter of credit, the maximum amount available under such letter of credit, the terms (including the expiration date) of such letter of credit and the party or parties in whose favor such letter of credit was issued), and (c) the name and address of each Person who has a power of attorney to act on behalf of the Company or such Subsidiary. The Company has heretofore delivered to the Acquiror true, correct and complete copies of each letter of credit and each power of attorney described in Schedule 3.22 of the Disclosure Schedules.

Section 3.23 Warranties to Customers. There is no claim, action, suit, investigation or proceeding pending against the Company or any of its Subsidiaries, or, threatened, relating to alleged defects in the Company Products or the failure of any such Company Product to substantially conform to agreed-upon specifications, except as would not, individually or in the aggregate, be material to the Company and its Subsidiaries, and, to the knowledge of the Company, there is no basis for any of the foregoing.

Section 3.24 Brokers. Except for J.P. Morgan Securities LLC ("JPM"), the fees and expenses of which will constitute Transaction Expenses and be paid at Closing, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Company or any of its Subsidiaries. The Company has furnished to the Acquiror a complete and correct copy of all agreements between the Company and JPM pursuant to which such firm would be entitled to any payment relating to the transactions contemplated hereby.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PARENT, THE ACQUIROR AND SUB

Parent, the Acquiror and Sub hereby represent and warrant to the Company as follows:

Section 4.1 Organization. Each of Parent, the Acquiror and Sub is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has full corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

Section 4.2 Authority. Each of Parent, the Acquiror and Sub has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Parent, the Acquiror and Sub of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by Parent, the Acquiror and Sub of the transactions contemplated hereby and thereby have been duly and validly authorized by the Boards of Directors of Parent, the Acquiror and Sub and by the Acquiror as the sole stockholder of Sub. No other corporate proceedings on the part of Parent, the Acquiror or Sub are necessary to authorize this Agreement or any Ancillary Agreement or to consummate the transactions contemplated hereby or thereby. This Agreement has been, and upon their execution each of the Ancillary Agreements to which Parent, the Acquiror or Sub will be a party will have been, duly executed and delivered by Parent, the Acquiror and Sub, as applicable, and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon their execution each of the Ancillary Agreements to which Parent, the Acquiror or Sub will be a party will constitute, the legal, valid and binding obligations of Parent, the Acquiror and Sub, as applicable, enforceable against Parent, the Acquiror and Sub, as applicable, in accordance with their respective terms except as limited by the Bankruptcy and Equity Exceptions.

Section 4.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by each of Parent, the Acquiror and Sub of this Agreement and each of the Ancillary Agreements to which it will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws of Parent, the Acquiror or Sub;

(ii) conflict with or violate any Law applicable to Parent, the Acquiror or Sub; or

(iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under or require any consent of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other Contract to which Parent, the Acquiror or Sub is a party;

except for any such conflicts, violations, breaches, defaults or other occurrences that do not, individually or in the aggregate, materially impair the ability of Parent, the Acquiror or Sub to consummate, or prevent or materially delay, the Merger or any of the other transactions contemplated by this Agreement or the Ancillary Agreements or would reasonably be expected to do so.

(b) Neither Parent, the Acquiror nor Sub is required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by Parent, the Acquiror and Sub of this Agreement and each of the Ancillary Agreements to which it will be party or the consummation of the transactions contemplated hereby or thereby, or in order to prevent the termination of any right, privilege, license or qualification of Parent, the Acquiror and Sub, except for (i) any filings required to be made under the HSR Act, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and (iii) such filings as may be required by any applicable federal or state securities or "blue sky" laws.

Section 4.4 SEC Filings.

(a) All reports, schedules, forms, registration statements and other documents (and any amendments or supplements thereto) required to be filed by Parent with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act") since January 1, 2020, as amended prior to the Agreement Date (together with any documents furnished during such period by Parent to the SEC on a voluntary basis on Current Reports on Form 8-K, collectively, the "Parent SEC Documents"), have been filed and complied in all material respects with, to the extent in effect at the time of filing, the requirements of the Exchange Act applicable to such Parent SEC Documents. Parent SEC Documents, when read together, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments received from the SEC or its staff with respect to Parent SEC Documents.

(b) The consolidated financial statements of Parent included or incorporated by reference in Parent SEC Documents comply, as of their respective dates and, if amended, as of the date of the last such amendment, in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present, in all material respects, the consolidated financial position of Parent and its Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal year-end audit adjustments, the absence of notes and other adjustments described therein).

Section 4.5 Issuance of Share Consideration. The Share Consideration being delivered by Parent hereunder is and shall be duly authorized and validly issued, fully paid and nonassessable. Following the issuance of the Share Consideration pursuant to Section 2.11, the Stockholders, holders of Vested Option and holders of In-the-Money Warrants shall acquire good, valid and marketable title to the Share Consideration, free and clear of any Encumbrance other than Encumbrances created by the Stockholders, holders of Vested Option and holders of In-the-Money Warrants or the Company or applicable securities Laws. The Share Consideration will be issued in compliance in all material respects with all applicable federal and state securities Laws, other than Laws imposed on the Stockholders, holders of Vested Option and holders of In-the-Money Warrants.

Section 4.6 Brokers. Except for Goldman Sachs & Co. LLC, the fees of which will be paid by the Acquiror, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of Parent, the Acquiror or Sub.

Section 4.7 Litigation. (a) There is no material Action pending (or, to the knowledge of Parent, the Acquiror or Sub, being threatened) against Parent or Sub or (b) any Action that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other transactions contemplated by this Agreement.

Section 4.8 WKSI. Parent is a "well-known seasoned issuer" as such term is defined under Rule 405 under the Securities Act.

ARTICLE V
COVENANTS

Section 5.1 Stockholder Consent and Agreement. Within six hours after the execution of this Agreement, the Company shall deliver to the Acquiror the Stockholder Consent and Agreement executed by the Requisite Holders.

Section 5.2 Confidentiality. Each of the parties shall hold, and shall cause its Representatives to hold, in confidence all documents and information furnished to it by or on behalf of any other party to this Agreement in connection with the transactions contemplated hereby pursuant to the terms of the confidentiality agreement dated November 5, 2020 between the Acquiror and the Company (the "Confidentiality Agreement"), which shall continue in full force and effect until the Closing. If for any reason this Agreement is terminated prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect in accordance with its terms.

Section 5.3 Registration Rights.

(a) Within two Business Days after the Closing (the "Filing Date"), Parent shall file a registration statement on Form S-3 (which shall be an automatic shelf registration statement that is effective automatically upon filing such registration statement with the SEC) (the "Form S-3") with respect to the resale of the Share Consideration. Without limiting the obligations of Parent in the preceding sentence (which, if not complied with, shall be a breach of covenant by Parent), if the Form S-3 is not automatically effective on the Filing Date, Parent shall use commercially reasonable efforts to ensure that the Form S-3 is declared effective under the Securities Act as soon as practicable thereafter and promptly notify the Stockholder Representative that the Form S-3 has been declared effective. Once the Form S-3 is declared effective (or upon filing of the Form S-3, in the case of an automatic shelf registration statement that is effective automatically upon filing), Parent shall use commercially reasonable efforts to prepare and file with the SEC such amendments and post-effective amendments to the Form S-3, such supplements to the prospectus in the Form S-3, and such replacement registration statements on the Form S-3, as may be reasonably requested by the Stockholder Representative (at the direction of the Advisory Group) or as may be required by the rules, regulations or instructions applicable to the Form S-3 or by the Securities Act or rules and regulations thereunder to keep the Form S-3 effective for the resale of the Share Consideration, until all Registrable Securities registered thereunder have ceased to be Registrable Securities.

(b) In connection with the Form S-3, Parent shall (i) pay all costs and expenses in connection with such registration including all registration and filing fees, expenses of any audits incident to or required by any such registration, fees and expenses of complying with securities and "blue sky" laws, printing expenses and fees and expenses of Parent's counsel and accountants and Financial Industry Regulatory Authority, Inc. filing fees (if any) (other than underwriting discounts and commissions and the costs of any counsel of a Stockholder, or holder of In-the-Money Warrants or the Stockholder Representative), (ii) use commercially reasonable efforts to prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act in connection with resale of the Share Consideration, (iii) furnish to the Stockholder Representative such number of copies of a prospectus and any supplement thereto (in each case including all exhibits and documents incorporated by reference therein) conforming to the requirements of the Securities Act (it being understood that public filing on EDGAR shall be sufficient to satisfy this requirement), and such other documents as the Stockholder Representative may reasonably request in order to facilitate the disposition of the Share Consideration, (iv) notify the Stockholder Representative of any request by the SEC that Parent amend or supplement such registration statement or prospectus or the issuance by the SEC of any stop order suspending the effectiveness of such registration statement or the initiation or threatening of any proceeding for such purpose (and promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued), (v) cease distribution of the prospectus if the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances, and, as soon as reasonably practicable, file with the SEC and furnish to the Stockholders, and holders of In-the-Money Warrants, a supplement or amendment to such prospectus such that such prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in light of the circumstances under which they were made, (vi) take such further action as reasonably requested from time to time by the Stockholder Representative (at the direction of the Advisory Group), to the extent required to enable the Stockholders and holders of In-the-Money Warrants to sell the Share Consideration under the Form S-3 or pursuant to an exemption provided under the Securities Act (including using its reasonable efforts to (X) register or qualify such Registrable Securities under such other securities or "blue sky" laws of such U.S. state jurisdictions as the Stockholder Representative (at the direction of the Advisory Group) reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable the Stockholders and holders of In-the-Money Warrants to consummate the disposition in such U.S. state jurisdictions of the Registrable Securities; provided, that Parent shall not be required to qualify generally to do business, subject itself to general taxation or consent to general service of process in any jurisdiction where it would not otherwise be required to do so but for this Section 5.3(b), and (Y) cooperate with the Stockholders and holders of In-the-Money Warrants to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold pursuant to such Form S-3 or Rule 144 (in the discretion of the applicable Stockholder or holder of In-the-Money Warrants) free of any restrictive legends and representing such number of shares of Parent Common Stock and registered in the names of the Stockholders and holders of In-the-Money Warrants; provided, that Parent may satisfy its obligations hereunder without issuing physical stock certificates through the use of The Depository Trust Company's Direct Registration System); provided, further, that Parent's obligations under subclause (Y) with respect to a Stockholder or holder of In-the-Money Warrants shall be conditioned on such Stockholder or holder of In-the-Money Warrants, as applicable (or, if applicable, their limited partners that receive shares of Parent Common Stock), delivering to Parent a certificate supporting the removal of any restrictive legends in the form attached hereto as Exhibit J, and (vii) indemnify and hold harmless the Stockholders, holders of In-the-Money Warrants, each underwriter, broker or any other Person acting on behalf of the Stockholders, holders of In-the-Money Warrants and each other Person, if any, who controls any of the foregoing Persons within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the fullest extent permitted by Law, from and against any and all Losses to which any of the foregoing Persons may become subject under the Securities Act or otherwise caused by, arising from or relating to any untrue statement or alleged untrue statement of a material fact, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, contained in any such registration statement or prospectus or any amendment thereof or supplement thereto relating to the Share Consideration, except insofar as such Losses are caused by or related to any such untrue statement or omission or alleged untrue statement or omission so made based upon information furnished in writing to Parent by the Stockholders, holders of Vested Options and holders of In-the-Money Warrants expressly for use therein (provided, that the provisions set forth in Section 6.4 shall apply to any indemnification under this Section 5.3(b) *mutatis mutandis*).

(c) The Form S-3 (or any prospectus or prospectus supplement forming a part of such Form S-3), as initially filed, shall include the Registrable Securities of all Stockholders or holders of In-the-Money Warrants from whom Parent has received a completed Investor Questionnaire on or before the first Business Day prior to the Agreement Date and allow for distributions by such Stockholders or holders of In-the-Money Warrants to Fund Transferees under the Form S-3. On a date requested by the Stockholder Representative (at the direction of the Advisory Group) in writing (so long as such date is at least 10 Business Days after such request), Parent shall use commercially reasonable efforts to file an amendment or supplement, as appropriate, to the Form S-3 (and any prospectus or prospectus supplement forming a part of such Form S-3) to include the Registrable Securities of (i) any Stockholders or holders of In-the-Money Warrants who deliver Investor Questionnaires on or after the first Business Day prior to the Closing Date or (ii) any Permitted Transferees to the extent such filing is required in order to permit the Permitted Transferees to offer and sell the Registrable Securities received by the Permitted Transferees in the Permitted Transfer pursuant to the Form S-3. Parent further agrees to provide in the Form S-3 (and in any prospectus or prospectus supplement forming a part of such Form S-3) that all Permitted Transferees shall, by virtue of receiving Registrable Securities in a Permitted Transfer, be deemed to be selling stockholders under the Form S-3 (or any such prospectus or prospectus supplement) with respect to the Registrable Securities received by such Permitted Transferees in such Permitted Transfers. Parent shall only be required to file three such amendments or supplements. Parent shall include disclosure in the plan of distribution in the Form S-3 (and any prospectus or prospectus supplement forming a part of such Form S-3) that Permitted Transfers to Fund Transferees will be transfers covered by the Form S-3.

(d) Parent shall notify the Stockholder Representative promptly upon discovery that the Form S-3 or any supplement to any prospectus forming a part of the Form S-3 contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading in the light of the circumstances under which they were made, and, as promptly as practicable, use commercially reasonable efforts to supplement or amend such prospectus so that such prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein not misleading in the light of the circumstances under which they were made.

Section 5.4 Tax Matters.

(a) Cooperation and Assistance. Each of Parent, the Acquiror, the Company, the Stockholders, holders of Vested Options, holders of In-the-Money Warrants and the Stockholder Representative shall provide the other parties, at such party's sole cost and expense, with such cooperation and assistance as may be reasonably requested in connection with the preparation or review of any Tax Return or any Action relating to Taxes with respect to Pre-Closing Tax Periods. Such cooperation shall include the retention and (upon the other party's request) the provision (with the right to make copies) of records and information reasonably relevant to any tax proceeding or audit, making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Notwithstanding anything to the contrary in this Agreement, the Stockholder Representative shall have no obligation to prepare or file any Tax Returns.

(b) Straddle Period. For any Straddle Period, Taxes shall be allocated to the portion of such period ending on the Closing Date in an amount equal to: (i) in the case of any gross receipts, business and occupation, income, payroll, employment or similar Taxes, the portion of such Taxes allocable to the portion of the Straddle Period ending on or before the Closing Date, as determined on the basis of the deemed closing of the books and records of the Company at the end of the Closing Date (unless otherwise required by applicable Tax Law); provided that, in determining such amount, exemptions, allowances or deductions that are calculated on a periodic basis, such as the deduction for depreciation, shall be taken into account on a pro-rated basis in the manner described in clause (ii) below, and (ii) in the case of any Taxes other than those described in clause (i), the Taxes for the entire Straddle Period multiplied by a fraction the numerator of which is the number of days in the Straddle Period from the beginning of the Straddle Period through and including the Closing Date and the denominator of which is the number of days in the entire Straddle Period. For purposes of a Tax that is imposed as a result of the application of any rule under Subpart F of Subchapter N of the Code, the taxable period shall be assumed to end on the Closing Date using a "closing of the books" method.

(c) Transfer Taxes. All transfer, documentary, sales, use, stamp, recording, property, registration and similar Taxes and fees (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement ("Transfer Taxes") shall be borne 50% by the Stockholders, holders of Vested Options and holders of In-the-Money Warrants as a Transaction Expense, on the one hand, and 50% by the Acquiror, on the other hand. The party customarily responsible under applicable Law shall timely file any Tax Return with respect to such Transfer Taxes and the non-filing party (or, in the case of the Stockholders, the Stockholder Representative) will cooperate in the preparation and execution of any such Tax Returns and other documentation. The parties hereto shall reasonably cooperate in connection with the filing of any such Tax Returns for Transfer Taxes including joining in the execution of such Tax Returns.

(d) Tax Returns. The Acquiror shall prepare or cause to be prepared, consistent with past practice except as otherwise required by applicable law, and file or caused to be filed all Tax Returns for the Company and its Subsidiaries for all periods ending on or prior to the Closing Date that are filed after the Closing Date. The Acquiror shall provide such Tax Returns that are income Tax Returns to the Stockholder Representative at least thirty (30) days before filing (including extensions), and any such Tax Returns that are non-income Tax Returns to the Stockholder Representative at least fifteen (15) days before filing (including extensions), in each case, for review and comment. The Acquiror shall consider in good faith any reasonable and timely comments made by the Stockholder Representative.

(e) Post-Closing Tax Covenant. Without the consent of the Stockholder Representative (not to be unreasonably withheld, conditioned or delayed), the Acquiror shall not, except as otherwise required by law or contemplated by this Agreement, amend any Tax Return or election made in connection with such Tax Return with respect to the Company or any of its Subsidiaries for any Tax period ending on or before the Closing date, or change any method of accounting for Tax purposes or Tax accounting period with respect to any Tax period or portion thereof ending on or before the Closing Date that would reasonably be expected to give rise to a claim against the Stockholders for indemnification of Indemnified Taxes. Notwithstanding anything to the contrary in the foregoing, the Acquiror shall be entitled to take such actions as reasonably necessary to remediate any Tax compliance, reporting, filing, withholding, payment or similar deficiencies of the Company with respect to the matters set forth on Schedule 6.2(f) of the Disclosure Schedules; provided, however, that, prior to contacting a Tax authority to make a voluntary correction or amendment of any Tax Return relating to Taxes with respect to Pre-Closing Tax Periods or initiate participation in a voluntary disclosure agreement or similar program ("VDA"), the Acquiror shall notify the Stockholder Representative and consider in good faith any comments by the Stockholder Representative with respect to the proposed action(s). If the Stockholder Representative does not consent, and is not deemed to have consented pursuant to the following sentence, to such proposed action with respect to the matters set forth on Schedule 6.2(f) of the Disclosure Schedules (and such failure to consent was not unreasonable or due to an unreasonable delay or condition), then neither the Taxes paid in connection with such correction nor any out-of-pocket costs of correcting such practice shall be deemed to be Indemnified Taxes or other Tax liabilities indemnifiable pursuant to Section 6.2(a) or Section 6.2(f). The Stockholder Representative shall be deemed to have consented to a proposed action with respect to the matters set forth on Schedule 6.2(f) of the Disclosure Schedules if the Acquiror has received written advice, from an independent Tax advisor, that such action is necessary to cause the Company's Tax Returns to comply with applicable Tax law (determined on a "more likely than not" basis). Any participation in such a VDA proceeding will be a Tax Contest subject to Section 5.4(g).

(f) Refunds. The Stockholders shall be entitled to receive any Tax refund received after the Closing Date received by the Acquiror, the Company or any of their Affiliates with respect to Pre-Closing Taxes. The Acquiror shall pay over such Tax refund to the Exchange Agent for distribution to the Stockholders promptly upon receipt, net of any Taxes and out of pocket expenses associated with the receipt of the Tax refund.

(g) Tax Contests. The Acquiror shall notify the Stockholder Representative within fifteen (15) days of either its receipt of any notice of any U.S. or non-U.S. federal, state or local Action or other proceedings relating to Taxes or Tax Returns of the Company or its Subsidiaries for Pre-Closing Tax Periods (any such proceedings, a "Tax Contest"); provided, that the failure of the Acquiror to give such notice shall not release, waive or otherwise affect the Stockholder Representative's obligations with respect to this Agreement. The Acquiror shall have the right to control any such Tax Contest and to employ counsel of its choice; provided, however, (i) the Stockholder Representative shall have the right to participate in any such Tax Contest, at the expense of the Stockholders and (ii) the Acquiror shall keep the Stockholder Representative reasonably informed of the status of such Tax Contest (including providing the Stockholder Representative with copies of all written correspondence regarding such Tax Contest). The Acquiror shall not settle or compromise any Tax Contest without the consent of the Stockholder Representative (not to be unreasonably withheld, conditioned or delayed). The parties each agree to consult with and to keep the other parties hereto informed on a regular basis regarding the status of any Tax Contest to the extent that such Tax Contest could affect a liability of such other party (including indemnity obligations hereunder).

(h) Termination of Tax Sharing Agreements. Tax sharing agreements, Tax indemnity agreements, Tax allocation agreements, Tax receivable agreements or similar agreements to which the Company or its Subsidiary is a party or has any liability (other than commercial agreements the primary purpose of which is not the sharing of Taxes) shall, prior to the Closing, be cancelled without any consideration or further liability to any party.

Section 5.5 Employee Obligations.

(a) For a period commencing upon the Closing Date and continuing through the first anniversary of the Closing Date, the Acquiror shall, or shall cause its Subsidiaries to, provide to each employee of the Company or its Subsidiaries who continues to be employed by the Company or its Subsidiaries following the Closing Date (the "Continuing Employees") (i) base salary or base rate of pay, and cash-based incentive compensation opportunity (other than equity-based compensation, change of control and retention benefits) that is not less than that received by the Continuing Employees immediately prior to the Closing Date, and (ii) employee benefits that are substantially comparable in the aggregate to the benefits (other than equity-based compensation, change of control, retention, defined benefit pension and post-employment welfare benefits) provided to similarly situated employees of the Acquiror and its Subsidiaries.

(b) For all purposes under the employee benefit plans of the Acquiror, the Company or any of their Subsidiaries, the Acquiror shall use commercially reasonable efforts to cause each Continuing Employee to be credited with his or her years of service with the Company and its Subsidiaries before the Closing Date, to the same extent as such Continuing Employee was entitled, before the Closing Date, to credit for such service under the corresponding employee benefit plan, except (x) for purposes of benefit accrual under defined benefit plans, (y) for any purpose where service credit for the applicable period is not provided to participants generally, and (z) to the extent such credit would result in a duplication of accrual of benefits.

(c) With respect to any benefit plan maintained by the Acquiror or an Affiliate of the Acquiror in which Continuing Employees are eligible to participate, the Acquiror shall also use commercially reasonable efforts to (i) waive all limitations as to preexisting conditions and exclusions with respect to participation and coverage requirements applicable to such employees to the extent such conditions and exclusions were satisfied or did not apply to such Continuing Employees under the group health plans of the Company or any of its Subsidiaries prior to the Closing and (ii) provide each Continuing Employee with credit for any copayments and deductibles paid prior to the Closing in satisfying any analogous deductible or out of pocket requirements to the extent applicable under any such plan. Where applicable, and automatically applicable if required by applicable Law, the Acquiror shall use commercially reasonable efforts to credit or cause to be credited each Continuing Employee's length of service with the Company or any of its Subsidiaries for purposes of eligibility, vesting and for purposes of future vacation and sick day accruals and determining severance amounts under the Acquiror's employee benefit plans to the same extent and for the same purpose as such service was recognized under the analogous Company benefit plan; provided, however, that such service shall not be recognized to the extent that it would result in a duplication of benefits.

(d) Nothing in this Section 5.5 or elsewhere in this Agreement is intended nor shall be construed to (i) be treated as an amendment to any employee benefit plan, (ii) create a right in any Continuing Employee to employment with the Acquiror, the Company or their respective Affiliates, (iii) limit the right of the Acquiror, the Company or their respective Affiliates to terminate any employee at any time for any reason or no reason, (iv) modify the "at-will" employment relationship with any employees of the Company or any of their Subsidiaries or (v) create any third-party beneficiary rights in any Continuing Employee, any beneficiary or dependent thereof, with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any Continuing Employee by the Acquiror or the Company or their respective Affiliates or under any benefit plan which the Acquiror, the Company or their respective Affiliates may at any time maintain, sponsor or incur any liability.

(e) The Company agrees and acknowledges that (i) prior to the date hereof, the Company has obtained for the benefit of the pre-Closing directors and officers a so-called "tail" policy (the "D&O Tail") for the six (6)-year period following the Closing Date covering acts or omissions occurring on or before the Effective Time with respect to those Persons who are currently covered by the directors' and officers' liability insurance policies, on terms with respect to such coverage and amounts at least as favorable to such Persons as those of such policies in effect on the date hereof and (ii) the costs and expenses of the D&O Tail shall be a Transaction Expense.

(f) For at least six years following the Closing, the Surviving Corporation and its Subsidiaries will not amend the rights to exculpation, indemnification, and advancement of expenses now existing in their respective certificate of incorporation or bylaws or similar organizational documents in a manner materially adverse to the officers and directors of the Surviving Corporation and its Subsidiaries.

(g) If Parent, the Acquiror, the Surviving Corporation, or any of their successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving company or entity of such consolidation or merger, (ii) transfers or conveys all or substantially all of their assets to any Person or (iii) ceases to exist for any reason, then, in each such case, to the extent necessary, Parent shall cause the proper provision to be made so that the successors and assigns of Parent, the Acquiror or the Surviving Corporation, as the case may be, shall assume the obligations set forth in Section 5.5(e) and Section 5.5(f).

ARTICLE VI
INDEMNIFICATION

Section 6.1 Survival.

(a) The representations and warranties of the Company, Parent, the Acquiror and Sub contained in this Agreement and the Ancillary Agreements and any schedule, certificate or other document delivered pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby shall survive the Closing until the first anniversary of the Closing Date; provided, however, that:

(i) the representations and warranties set forth in Sections 3.1(a) and 3.1(b) and 4.1 relating to organization and existence, Sections 3.2 and 4.2 relating to authority, Section 3.4 relating to capitalization, Section 3.5 relating to equity interests, Sections 3.24, 4.6 relating to broker's fees and finder's fees and Section 4.8 related to WKSI status (Sections 3.1(a), 3.1(b), 3.2, 3.4, 3.5, 3.24, 4.1, 4.2, 4.6 and 4.8 are collectively referred to herein as the "Fundamental Representations"), and for any breach of any representation in the case of Fraud, shall all survive the Closing until the third anniversary of the Closing Date; and

(ii) the representations and warranties set forth in Section 3.15 relating to Taxes shall survive until the close of business on the 60th day following the expiration of the applicable statute of limitations with respect to the Tax liabilities in question (giving effect to any waiver, mitigation or extension thereof).

(b) The respective covenants and agreements of the Company, the Stockholder Representative, Parent, the Acquiror and Sub contained in this Agreement shall survive the Closing until the expiration of the statute of limitations following the date all performance thereunder was due to be performed; provided, however, that the covenants and agreements set forth in Section 5.4 shall survive until the close of business on the 60th day following the expiration of the applicable statute of limitations with respect to the Tax liabilities in question (giving effect to any waiver mitigation or extension thereof).

(c) None of the Seller Indemnifying Parties, Parent, the Acquiror or Sub shall have any liability with respect to any representations, warranties, covenants or agreements unless written notice of an actual or threatened claim is given to the other party prior to the expiration of the survival period set forth in this Section 6.1, if any, for such representation, warranty, covenant or agreement, in which case such representation, warranty, covenant or agreement shall survive as to such claim until such claim has been finally resolved, without the requirement of commencing any Action in order to extend such survival period or preserve such claim. For purposes of this Section 6.1, "applicable statute of limitations" means, with respect to any particular representation, warranty, covenant or agreement, the longest limitation period that may apply (under any Law) to any claim or action (asserted or brought by any Indemnified Party against any Seller Indemnifying Party, by any party against the Seller Indemnifying Parties or by or against any other Person) that relates in any way to such representation, warranty, covenant or agreement or that constitutes, gives rise to or relates in any way to any actual or alleged inaccuracy in or breach of such representation, warranty, covenant or agreement. For the avoidance of doubt, where any survival period that extends beyond the expiration of the survival period set forth in Section 6.1(a) or Section 6.1(b) (including any "applicable statute of limitations" survival period) would otherwise be limited by 10 Del. C. § 8106(a), the parties intend that 10 Del. C. § 8106(a) shall not be given effect and 10 Del. C. § 8106(c) shall apply.

Section 6.2 Indemnification by the Seller Indemnifying Parties. From and after the Closing, the Stockholders, holders of Vested Options and holders of In-the-Money Warrants (the "Seller Indemnifying Parties"), shall, severally and not jointly in accordance with their respective (i) Pro Rata Shares for Losses recovered from the Indemnity Escrow Fund or Special Indemnity Escrow Fund and (ii) Indemnity Pro Rata Shares for all other Losses, save, defend, indemnify and hold harmless Parent, the Acquiror, Sub, the Surviving Corporation and their Affiliates, and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of foregoing for, any and all losses, damages (other than punitive damages except to the extent payable to a third-party), liabilities, deficiencies, interest, awards, judgments, penalties, costs and out-of-pocket expenses (including reasonable out-of-pocket attorneys' fees, costs and other reasonable out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter collectively, "Losses"), asserted against, incurred, sustained or suffered by any of the foregoing to the extent as a result of, arising out of or relating to:

(a) any breach of any representation or warranty made by the Company contained in this Agreement or any Ancillary Agreement (without giving effect to any limitations or qualifications with respect to materiality or Material Adverse Effect);

(b) any breach of any covenant or agreement by the Company contained in this Agreement or any Ancillary Agreement;

(c) any amounts paid to the holders of Dissenting Shares, including any interest required to be paid thereon, that are in excess of what such holders would have received hereunder had such holders not been holders of Dissenting Shares;

(d) any Indemnified Taxes;

(e) any Fraud by the Company; and

(f) the matters described on Schedule 6.2(f) of the Disclosure Schedules.

Section 6.3 Indemnification by the Acquiror. The Acquiror (the "Acquiror Indemnifying Parties") shall save, defend, indemnify and hold harmless the Stockholders, holders of Vested Options, holders of In-the-Money Warrants and their Affiliates and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all Losses asserted against, incurred, sustained or suffered by any of the foregoing to the extent as a result of, arising out of or relating to:

(a) any breach of any representation or warranty made by Parent, the Acquiror or Sub contained in this Agreement or any Ancillary Agreement (without giving effect to any limitations or qualifications as to materiality); or

(b) any breach of any covenant or agreement by Parent, the Acquiror or Sub contained in this Agreement or any Ancillary Agreement.

Section 6.4 Procedures.

(a) A party seeking indemnification (the "Indemnified Party") in respect of, arising out of or involving a Loss or a claim or demand made by any person (other than a party hereto) against the Indemnified Party (a "Third Party Claim") shall deliver notice (a "Claim Notice") in respect thereof to the Stockholder Representative, on behalf of the Seller Indemnifying Parties, or to the Acquiror, as applicable (the "Indemnifying Party") with reasonable promptness after receipt by such Indemnified Party of notice of the Third Party Claim, and shall provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to deliver a Claim Notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VI except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) The Indemnifying Party shall have the right, upon written notice to the Indemnified Party within 15 days of receipt of a Claim Notice from the Indemnified Party in respect of such Third Party Claim, to assume the defense thereof (except that the defense or prosecution of such claim shall be tendered to the insurance carrier of the R&W Insurance Policy if such carrier has assumed the defense thereof under the R&W Insurance Policy) at the expense of the Indemnifying Party (which expenses shall not be applied against any indemnity limitation herein) with counsel selected by the Indemnifying Party and satisfactory to the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any claim (i) for equitable or injunctive relief, (ii) that would impose criminal liability or damages, (iii) that involves a material customer or supplier of the Indemnified Party or (iv) if the Indemnified Party reasonably determines that the Losses that it may incur arising from or related to any claim could reasonably be expected to exceed the General Cap or the Indemnification Cap, as applicable, and the Indemnified Party shall have the right to defend, at the expense of the Indemnifying Party, any such Third Party Claim. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has failed to assume the defense thereof. If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period and otherwise in accordance with the first sentence of this Section 6.4(b), the Indemnified Party shall have the sole right to assume the defense of and to settle such Third Party Claim (except that the defense or prosecution of such claim shall be tendered to the insurance carrier of the R&W Insurance Policy if such carrier has assumed the defense thereof under the R&W Insurance Policy). If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless (i) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party or (ii) the named parties to the Third Party Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party reasonably determines that representation by counsel to the Indemnifying Party of both the Indemnifying Party and such Indemnified Party may present such counsel with a conflict of interest. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise or judgment (A) involves a finding or admission of wrongdoing, (B) does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such Third Party Claim, (C) imposes equitable remedies or any obligation on the Indemnified Party other than solely the payment of money damages for which the Indemnified Party will be indemnified hereunder or (D) requires the consent of the carrier of the R&W Insurance Policy under the terms of the R&W Insurance Policy. If the Indemnified Party assumes the defense of any Third Party Claim, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnified Party assumes the defense of, or otherwise has the right to control any Third Party Claim, the Indemnified Party shall not enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim without the prior written consent of the Indemnifying Party, such written consent not to be unreasonably withheld, conditioned or delayed.

(c) An Indemnified Party seeking indemnification in respect of, arising out of or involving a Loss or a claim or demand hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Party (a "Direct Claim") shall deliver a Claim Notice in respect thereof to the Indemnifying Party with reasonable promptness after becoming aware of facts supporting such Direct Claim, and shall provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to deliver a Claim Notice, however, shall not release the Indemnifying Party from any of its obligations under this Article VI except to the extent that the Indemnifying Party is materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to the Indemnified Party or otherwise than pursuant to this Article VI, provided, however, in all cases a Claim Notice must be delivered prior to the end of the respective survival period for such matter as set forth in Section 6.1. If the Indemnifying Party does not notify the Indemnified Party within 30 days following its receipt of a Claim Notice in respect of a Direct Claim that the Indemnifying Party disputes its liability to the Indemnified Party hereunder, such Direct Claim specified by the Indemnified Party in such Claim Notice shall be conclusively deemed a liability of the Indemnifying Party hereunder and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand. If the Indemnifying Party agrees that it has an indemnification obligation but asserts that it is obligated to pay a lesser amount than that claimed by the Indemnified Party, the Indemnifying Party shall pay such lesser amount promptly to the Indemnified Party, without prejudice to or waiver of the Indemnified Party's claim for the difference.

(d) The indemnification required hereunder (i) by a Seller Indemnifying Party shall be made by prompt payment by the Escrow Agent (to the extent of any amounts then held in the Indemnity Escrow Fund if applicable) or the Indemnifying Party (to the extent of any amounts not then held in the Indemnity Escrow Fund if applicable) of the amount of actual Losses in connection therewith, as and when bills are received by the Indemnifying Party or Losses incurred have been notified to the Indemnifying Party, within five Business Days after receipt of notice of such Losses, from the date such Losses have been notified to the Indemnifying Party and (ii) by an Acquiror Indemnifying Party shall be made by prompt payment by the Acquiror of the amount of actual Losses in connection therewith, as and when bills are received by the Indemnifying Party or Losses incurred have been notified to the Indemnifying Party, within five Business Days after receipt of notice of such Losses, from the date such Losses have been notified to the Indemnifying Party.

(e) The Indemnifying Party shall not be entitled to require that any action be made or brought against any other Person before action is brought or claim is made against it hereunder by the Indemnified Party.

(f) Notwithstanding the provisions of Section 7.11, each Indemnifying Party hereby consents to the nonexclusive jurisdiction of any court in which an Action in respect of a Third Party Claim is brought against any Indemnified Party for purposes of any claim that an Indemnified Party may have under this Agreement with respect to such Action or the matters alleged therein and agrees that process may be served on each Indemnifying Party with respect to such claim anywhere.

Section 6.5 Limits on Indemnification. Notwithstanding anything to the contrary contained in this Agreement:

(a) an Indemnifying Party shall not be liable for any claim for indemnification pursuant to Section 6.2(a) or Section 6.3(a), as the case may be, unless and until (A) the indemnifiable Losses which may be recovered from the Indemnifying Party with respect to a single claim (treating all related claims as a single claim) equals or exceeds $50,000 (any claim that does not equal or exceed $50,000, a "De Minimis Claim"), in which case the Indemnifying Party shall, subject to the other limitation contained herein, be liable for the full amount of such Losses from the first dollar thereof and (B) the aggregate amount of indemnifiable Losses which may be recovered from the Indemnifying Party pursuant to Section 6.2(a) or Section 6.3(a), as the case may be, equals or exceeds $2,500,000 (the "Basket"), in which case the Indemnifying Party shall, subject to the other limitation contained herein, be liable for the full amount of such Losses in excess of the Basket; provided, however, any De Minimis Claim shall not be credited toward satisfying the Basket;

(b) the maximum aggregate amount of indemnifiable Losses which may be recovered from an Indemnifying Party arising out of or relating to the causes set forth in Section 6.2(a) or Section 6.3(a), as the case may be, shall be an amount equal to $2,500,000 (the "General Cap"); provided, that the Basket and the General Cap shall not apply to Losses arising out of, or relating to the breach of, any Fundamental Representation, any representation or warranty contained in Section 3.15, or to any breach of a representation or warranty in the event of Fraud with respect to such representation or warranty;

(c) the maximum aggregate amount of indemnifiable Losses that may be recovered from an Indemnifying Party, together with any amounts paid directly by the Seller Indemnifying Parties under Section 2.14(f), shall be the Merger Consideration (the "Indemnification Cap"); provided, that in the case of any Seller Indemnifying Party the maximum aggregate amount of indemnifiable Losses that may be recovered from such Seller Indemnifying Party, together with any amounts paid directly by the Seller Indemnifying Parties under Section 2.14(f), will be the portion of the Merger Consideration actually received by such Seller Indemnifying Party; provided, however, that the Indemnification Cap shall not apply to Losses arising out of, or related to, Fraud actually committed by such Seller Indemnifying Party; provided, further, that for purposes of this Section 6.5(c) the value actually received by a Seller Indemnifying Party in respect of (i) any share of Parent Common Stock issued as the Merger Consideration shall be the Parent Closing Share Value for each such share and (ii) any Converted Vested Option shall be the Parent Closing Share Value minus the applicable exercise price for such Converted Vested Option after such conversion;

(d) the Seller Indemnifying Parties shall not be obligated to indemnify Parent, the Acquiror or any other Person with respect to any Loss to the extent that a specific accrual or reserve for the amount of such Loss was specifically taken into account in calculating the Net Adjustment Amount;

(e) any Losses for which any Indemnified Party would otherwise be entitled to indemnification under this Article VI shall be reduced by the amount of insurance proceeds actually received by the Indemnified Party from third parties in respect of the applicable Losses incurred by such Indemnified Party, net of the out-of-pocket costs and expenses reasonably incurred in pursuing or obtaining such insurance proceeds (excluding any premiums paid in connection with the R&W Insurance Policy), and net of any deductibles attributable to such claim or increases in premiums; and

(f) except with respect to claims of Fraud, Parent and the Acquiror acknowledge and agree that to the extent a claim arises out of facts and circumstances that would give rise to a claim for indemnification under Section 6.2(a), or could also be characterized as a claim arising under Section 6.2(a), Parent and the Acquiror shall (i) first, seek to recover Losses from the Indemnity Escrow Fund, to the extent of the amount then held in the Indemnity Escrow Fund, (ii) second, if the Retention on the R&W Insurance Policy has been satisfied, seek to recover Losses from the R&W Insurance Policy, to the extent that recovery therefrom is available, and (iii) third, to the extent not recovered under the R&W Insurance Policy, seek to recover any Losses directly from the Seller Indemnifying Parties.

Section 6.6 Remedies Not Affected by Investigation, Disclosure or Knowledge. If the transactions contemplated hereby are consummated, Parent and the Acquiror expressly reserve the right to seek indemnity or other remedy for any Losses arising out of or relating to any breach of any representation, warranty or covenant contained herein, notwithstanding any investigation by, disclosure to, knowledge or imputed knowledge of Parent, the Acquiror or any of their respective Representatives in respect of any fact or circumstance that reveals the occurrence of any such breach, whether before or after the execution and delivery hereof. In furtherance of the foregoing, the Seller Indemnifying Parties agree that knowledge or lack of reliance shall not be a defense in law or equity to any claim of breach of representation, warranty or covenant by Company herein, the Seller Indemnifying Parties shall not in any proceeding concerning a breach or alleged breach of any representation, warranty or covenant herein, or any indemnity thereof, seek information concerning knowledge or reliance of Parent, the Acquiror or any of their respective Representatives, through deposition, discovery or otherwise or seek to introduce evidence or argument in any proceeding regarding the knowledge or lack of reliance of Parent, the Acquiror or any of their respective Representatives prior to the Closing on or with respect to any such representations, warranties or covenants.

Section 6.7 R&W Insurance Policy and Indemnity Escrow Fund.

(a) Parent, the Acquiror, the Company and the Seller Indemnifying Parties acknowledge and agree that, (A) with respect to any indemnification claim under Section 6.2(a) or Section 6.2(d) with respect to Pre-Closing Taxes, in each case, other than with respect to Fraud (subject to the limitations elsewhere in this Article VI), Parent and the Acquiror shall (i) first, seek to recover Losses from the Indemnity Escrow Fund, to the extent of the amount then held in the Indemnity Escrow Fund, (ii) second, if the Retention on the R&W Insurance Policy has been satisfied, seek to recover Losses from the R&W Insurance Policy, to the extent that recovery therefrom is available, and (iii) third, to the extent not recovered under the R&W Insurance Policy, seek to recover any Losses directly from the Seller Indemnifying Parties and (B) solely with respect to any indemnification claims under Section 6.2(f) or claims under Section 6.2(a) to the extent arising out of breaches of representations and warranties for any sales and use Tax and other similar Tax liabilities, Parent and the Acquiror shall (i) first, seek to recover Losses from the Special Indemnity Escrow Fund and (ii) thereafter, seek to recover any Losses directly from the Seller Indemnifying Parties. Notwithstanding anything in this Agreement to the contrary, for the avoidance of doubt, the limitations, if any, on the right of Parent and the Acquiror to recover under the R&W Insurance Policy shall be solely as set forth therein and nothing in this Agreement shall impact the rights of Parent and the Acquiror under the R&W Insurance Policy.

(b) To the extent any amounts remain in the Indemnity Escrow Fund on the date that is 12 months after the Closing Date, the Acquiror and the Stockholder Representative shall deliver joint written instructions to the Escrow Agent to release from the Indemnity Escrow Fund an amount equal to the then-remaining balance of the Indemnity Escrow Fund less an amount necessary to satisfy any claims of Parent and the Acquiror in respect of claims for indemnification pursuant to Section 6.2 that remain unresolved as of such date.

(c) To the extent any amounts remain in the Special Indemnity Escrow Fund on the date that is 18 months after the Closing Date, the Acquiror and the Stockholder Representative shall deliver joint written instructions to the Escrow Agent to release from the Special Indemnity Escrow Fund an amount equal to the then-remaining balance of the Special Indemnity Escrow Fund less an amount necessary to satisfy any claims of Parent and the Acquiror in respect of claims for indemnification pursuant to Section 6.2(f) that remain unresolved as of such date.

Section 6.8 Exclusive Remedy. Notwithstanding anything contained in this Agreement to the contrary, from and after the Effective Time, the rights provided in this Article VI shall constitute the sole and exclusive remedy with respect to any Losses suffered in connection with or arising from this Agreement or any certificate or instrument delivered by the Company pursuant to this Agreement (including, in each case, any breach of any covenant or any breach of any representation or warranty) or otherwise in connection with the transactions contemplated hereby and thereby, except for (a) actions for specific performance, injunctive relief or other equitable relief pursuant to Section 7.13 or (b) matters to be resolved pursuant to the dispute resolution provisions set forth in Section 2.14.

ARTICLE VII
GENERAL PROVISIONS

Section 7.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the party incurring such fees or expenses, whether or not such transactions are consummated; provided, that if the transactions contemplated hereby are consummated, Transaction Expenses shall be borne and paid as provided in this Agreement. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by the other.

Section 7.2 Termination. This Agreement may be terminated at any time prior to the Closing: (i) by mutual written consent of the Acquiror and the Company; or (ii) by the Acquiror, if the Company fails to deliver to the Acquiror as described in Section 5.1 within six hours after the execution of this Agreement the Stockholder Consent and Agreement executed by the Requisite Holders. In the event of termination of this Agreement as provided in this Section 7.2, this Agreement shall forthwith become void and there shall be no liability on the part of either party except (a) for the provisions of Section 3.24 and Section 4.6 relating to broker's fees and finder's fees, Section 5.2 relating to confidentiality, Section 7.1 relating to fees and expenses, Section 7.6 relating to notices, Section 7.9 relating to third-party beneficiaries, Section 7.10 relating to governing law, Section 7.11 relating to submission to jurisdiction and this Section 7.2 and (b) no such termination shall relieve either party from any liability or damages arising out of a willful and material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement or Fraud, in which case the non-breaching party shall be entitled to all rights and remedies available at law or in equity.

Section 7.3 Amendment and Modification. This Agreement may be amended, modified or supplemented by the parties by action taken or authorized by their respective Boards of Directors at any time prior to the Closing (notwithstanding any stockholder approval); provided, however, that after approval of the transactions contemplated hereby by the stockholders of the Company, no amendment shall be made which pursuant to applicable Law requires further approval by such stockholders without such further approval. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each of the parties in interest at the time of the amendment.

Section 7.4 Extension. At any time prior to the Effective Time, the parties, by action taken or authorized by their respective Boards of Directors, may, to the extent permitted by applicable Law, extend the time for the performance of any of the obligations or other acts of the parties. Any agreement on the part of a party to any such extension shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party.

Section 7.5 Waiver. At any time prior to the Effective Time, the parties may, by action taken or authorized by their respective Boards of Directors, to the extent permitted by applicable Law, (a) waive any inaccuracies in the representations and warranties of the other parties contained in this Agreement or any document delivered pursuant hereto or (b) subject to applicable Law, waive compliance with any of the agreements or conditions of the other parties contained herein. Any agreement on the part of a party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder.

Section 7.6 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, upon written confirmation of receipt by e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice, provided that with respect to notices deliverable to the Stockholder Representative, such notices shall be delivered solely via e-mail or facsimile:

(a) if to Parent, the Acquiror, Sub or the Surviving Corporation, to:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, NY 13413
Attention: Bryan Menar, Chief Financial Officer
E-mail: bryan_menar@partech.com

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Eduardo Gallardo
E-mail: EGallardo@gibsondunn.com

and

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, NY 13413
Attention: Cathy A. King, Vice President & General Counsel
E-mail: cathy_king@partech.com

(b) if to Company, to:

Punchh Inc.
1875 S. Grant Street, Suite 810
San Mateo, California 94402
Attention: Shyam Rao, Chief Executive Officer
E-mail: shyam@punchh.com
with a copy (which shall not constitute notice) to:

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Attention: Kris Withrow
Scott Behar
E-mail: kwithrow@fenwick.com
sbehar@fenwick.com

(c) if to the Stockholder Representative, to:

Fortis Advisors LLC
Attention: Notices Department (Project Prism)
E-mail: notices@fortisrep.com
Facsimile No.: (858) 408-1843

Section 7.7 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall." References to days mean calendar days unless otherwise specified.

Section 7.8 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings among the parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of conduct of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

Section 7.9 No Third-Party Beneficiaries. Except as provided in Article VI and Sections 5.5(e), (f) and (g), nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

Section 7.10 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 7.11 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any party or its successors or assigns against any other party shall be brought and determined in the Court of Chancery of the State of Delaware or, in the event, but only in the event that the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division) or, if subject matter jurisdiction over the action or proceeding is vested exclusively in the federal courts of the United States of America, the United State District Court for the District of Delaware (the "Chosen Courts"). Each of the parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the Chosen Courts, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such Chosen Court. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process, and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the Chosen Courts for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such Chosen Court or from any legal process commenced in such Chosen Courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such Chosen Court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such Chosen Courts. Notwithstanding the foregoing, the parties agree that disputes with respect to the matters referenced in Section 2.14 shall be resolved by the Independent Accounting Firm as provided therein.

Section 7.12 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the Acquiror (in the case of an assignment by the Company) or the Company (in the case of an assignment by Parent, the Acquiror or Sub), and any such assignment without such prior written consent shall be null and void; provided, however, that Parent, the Acquiror or Sub may assign this Agreement to any Affiliate of the Acquiror without the prior consent of the Company; provided, further, that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 7.13 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Chosen Courts, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

Section 7.14 Currency. All references to "dollars" or "$" or "US$" in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 7.15 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 7.16 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.17 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 7.18 Conflict of Interest. Each of the parties acknowledges and agrees, on its own behalf and on behalf of its directors, stockholders, officers, employees and Affiliates that Fenwick & West LLP ("Fenwick") has acted as counsel for the Company in connection with the negotiation, preparation, execution, and delivery of this Agreement and the consummation of the transactions contemplated hereby. If the Stockholder Representative so desires, acting on behalf of the Stockholders, holders of Vested Options and holders of In-the-Money Warrants and without the need for any consent or waiver by the Company, Parent or the Acquiror, Fenwick shall be permitted to represent the Stockholders, holders of Vested Options and holders of In-the-Money Warrants after the Closing in connection with any matter, including anything related to the transactions contemplated by this Agreement, any other agreements referenced herein or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, Fenwick shall be permitted to represent the Stockholders, the holders of Vested Options and holders of In-the-Money Warrants, any of their respective agents and Affiliates, or any one or more of them, in connection with any negotiation, transaction or dispute (including any litigation, arbitration or other adversary proceeding) with Parent, the Acquiror, the Company or any of their agents or Affiliates under or relating to this Agreement, any transaction contemplated by this Agreement, and any related matter, such as claims or disputes arising under other agreements entered into in connection with this Agreement, including with respect to any indemnification claims. Upon and after the Closing, the Company shall cease to have any attorney-client relationship with Fenwick, unless and to the extent Fenwick is specifically engaged in writing by the Company to represent the Company after the Closing and either such engagement involves no conflict of interest with respect to the Stockholders or the Stockholder Representative consents in writing at the time to such engagement. Any such representation of the Company by Fenwick after the Closing shall not affect the foregoing provisions hereof.

Section 7.19 Attorney-Client Privilege. The attorney-client privilege of the Company solely to extent related to the negotiation of the transactions contemplated hereby shall be deemed to be the right of the Stockholders and not that of the Surviving Corporation, following the Closing, and may be waived only by the Stockholder Representative. Notwithstanding the foregoing or anything to the contrary, Fenwick's obligations of confidentiality and fiduciary duty to the Company regarding matters unrelated to the transactions contemplated hereby shall remain in effect after the Closing.

Section 7.20 No Other Representations or Warranties. Except for the representations and warranties contained in this Agreement, any Ancillary Agreement or any certificate delivered hereunder, no party nor any other Person makes any other representation or warranty, express or implied, either written or oral, at law or in equity, including any representation or warranty as to the accuracy or completeness of any information furnished or made available (including any information, documents or material made available in a virtual data room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success, or any representation or warranty arising from statute or otherwise in applicable law.

Section 7.21 Non-Reliance. Parent and the Acquiror have conducted its own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Company and its Subsidiaries, which investigation, review and analysis was done by Parent and its Representatives. In entering into this Agreement, each of Parent and the Acquiror acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of the Company or its representatives (except the representations and warranties contained in Article III or in any certificate or other agreement provided pursuant to this Agreement or in any Ancillary Agreement). Except for the representations and warranties contained in Article III, any Ancillary Agreement or any certificate delivered hereunder, the Company acknowledges and agrees that no representation or warranty of any kind whatsoever, express or implied, written or oral, is made or shall be deemed to have been made by or on behalf of the Company to Parent, the Acquiror or Sub in connection with this Agreement, and each of Acquiror, Parent and Sub hereby expressly disclaims reliance upon any such representation or warranty.

Section 7.22 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 7.23 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 7.24 No Presumption Against Drafting Party. Each of Parent, the Acquiror, Sub and the Company acknowledges that each party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh
Name: Savneet Singh
Title: Chief Executive Officer & President

PARTECH, INC.

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

SLIVER MERGER SUB, INC.

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

PUNCHH INC.

By: /s/ Shyam Rao
Name: Shyam Rao
Title: Chief Executive Officer

FORTIS ADVISORS LLC

By: /s/ Ryan Simkin
Name: Ryan Simkin
Title: Managing Director

Exhibit 10.1

Execution Version

CREDIT AGREEMENT
dated as of April 8, 2021

among

PAR TECHNOLOGY CORPORATION,
as Borrower,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

OWL ROCK FIRST LIEN MASTER FUND, L.P.,
as Administrative Agent and Collateral Agent
and

OWL ROCK CAPITAL ADVISORS LLC,
as Lead Arranger and Bookrunner

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** (this "**Agreement**"), dated as of April 8, 2021, is made among Par Technology Corporation, a Delaware corporation (the "**Borrower**"), each of the Guarantors (such terms and each other capitalized term used but not defined herein having the meaning given to it in Article I) from time to time party hereto, the Lenders from time to time party hereto and Owl Rock First Lien Master Fund, L.P. ("**Owl Rock**"), as administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns, the "**Administrative Agent**") and as collateral agent for the Secured Parties (in such capacity, together with its successors and permitted assigns, the "**Collateral Agent**").

WITNESSETH:

WHEREAS, on the Closing Date, pursuant to the Agreement and Plan of Merger, dated as of the date hereof (together with the exhibits and schedules thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in a manner permitted hereunder, the "**Closing Date Acquisition Agreement**"), by and among Borrower, ParTech, Inc., Sliver Merger Sub, Inc., Punchh Inc. and Fortis Advisors LLC, Borrower intends to, through one or more steps, consummate the acquisition of Punchh Inc. and its Subsidiaries (the "**Closing Date Acquisition**");

WHEREAS, on the Closing Date, the Borrower has requested that the Lenders extend credit in the form of Loans in an aggregate principal amount equal to $180,000,000 to (i) fund a portion of the consideration for the Closing Date Acquisition, (ii) pay related fees, costs and expenses and other transaction costs incurred in connection with the Transactions (including without limitation upfront fees and original issue discount) and (iii) finance the Closing Date Refinancing.

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements set forth herein and in the other Loan Documents, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"**ABR**" when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"**ABR Borrowing**" shall mean a Borrowing comprised of ABR Loans.

"**ABR Loan**" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"**Additional Amount**" shall have the meaning assigned to such term in Section 2.15(a).

"**Additional Guarantor**" shall mean any Restricted Subsidiary that becomes a Guarantor after the Closing Date pursuant to Section 5.10.

"**Additional Lender**" shall mean each Eligible Assignee that becomes a Lender.

"**Adjusted LIBO Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the greater of (i)(a) an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1.00%) equal to the LIBO Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 *minus* the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period and (ii) 0.50%.

"**Administrative Agent**" shall have the meaning given to that term in the preamble hereto, and include each other person appointed as a successor pursuant to Article IX.

"**Administrative Questionnaire**" shall mean an Administrative Questionnaire in form that may be supplied from time to time by Administrative Agent.

"**Affected Financial Institution**" shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution**.**

"**Affiliate**" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the person specified; *provided*, *however*, that neither any Lender nor any Agent (nor any of their Affiliates) shall be deemed to be an Affiliate of the Borrower or any of its Subsidiaries solely by virtue of its capacity as a Lender or Agent hereunder.

"**Agent-Related Distress Event**" shall mean, with respect to the Administrative Agent, the Collateral Agent or any Person that directly or indirectly controls the Administrative Agent or Collateral Agent (each, a "**Distressed Agent-Related Person**"), a voluntary or involuntary case with respect to such Distressed Agent-Related Person under any Debtor Relief Law is commenced, or a custodian, conservator, receiver or similar official is appointed for such Distressed Agent-Related Person or any substantial part of such Distressed Agent-Related Person's assets, or such Distressed Agent-Related Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Agent-Related Person to be, insolvent or bankrupt; *provided*, that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of any Distressed Agent-Related Person (other than the Administrative Agent or the Collateral Agent) owning Equity Interests in the Administrative Agent, the Collateral Agent or any Person that directly or indirectly controls the Administrative Agent.

"**Agents**" shall mean the Administrative Agent and the Collateral Agent; and "**Agent**" shall mean either of them.

"**Agreement**" shall have the meaning assigned to such term in the preamble hereto.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum equal (rounded upward, if necessary, to the next highest 1/100 of 1%) to the highest of (i) the prime commercial lending rate published by the Wall Street Journal as the "prime rate," (ii) the Federal Funds Rate plus 1/2 of 1.00% and (iii) the one-month Adjusted LIBO Rate plus 1.00% per annum. The applicable Alternate Base Rate shall at no time be less than 1.50% per annum. Any change in the Alternate Base Rate due to a change in the Base Rate, the Federal Funds Rate or the Adjusted LIBO Rate shall be effective on the effective date of such change in the Base Rate, the Federal Funds Rate or the Adjusted LIBO Rate, as the case may be.

"**Annual Recurring Revenue**" shall mean, with respect to a Test Period, the sum of: (x) all revenues derived from software as a service and related recurring support services revenue for the last fiscal month in such Test Period multiplied by twelve (12), (y) the monthly average amount of revenues derived referral fees for software as a service and related recurring support services for the three fiscal months in such Test Period multiplied by twelve (12) and (z) the monthly average amount of revenues derived from merchant transaction fees for the three fiscal months in such Test Period multiplied by twelve (12), each as recognized in accordance with GAAP, but excluding the impact of any purchase accounting or other adjustment arising out of the consummation of the Closing Date Acquisition and historical or future acquisitions.

"**Anti-Terrorism Laws**" shall have the meaning assigned to such term in Section 3.19.

"**Applicable ECF Percentage**" shall mean, for any fiscal year of the Borrower commencing with the fiscal year ending December 31, 2022, (a) 50% if the Total Net Annual Recurring Revenue Leverage Ratio (after giving effect to (i) any prepayments or buybacks described in Section 2.10(f)(C) and (ii) any such ECF Payment Amount assuming a 50% Applicable ECF Percentage) as of the last day of such fiscal year is greater than 1.50 to 1.00, (b) 25% if the Total Net Annual Recurring Revenue Leverage Ratio (after giving effect to (i) any prepayments or buybacks described in Section 2.10(f)(C) and (ii) any such ECF Payment Amount assuming a 25% Applicable ECF Percentage) as of the last day of such fiscal year is equal to or less than 1.50 to 1.00 but greater than or equal to 1.00 to 1.00 and (c) 0% if the Total Net Annual Recurring Revenue Leverage Ratio (after giving effect to any prepayments or buybacks described in Section 2.10(f)(C)) as of the last day of such fiscal year is less than 1.00 to 1.00. For the avoidance of doubt, if, after giving effect to the parenthetical phrases in any of the foregoing sub-clauses more than one of the preceding sub-clauses would be applicable, the sub-clause with the highest percentage shall apply.

"**Applicable Margin**" shall mean 3.75% per annum for ABR Loans and 4.75% per annum for Eurodollar Loans. Notwithstanding the foregoing, the Applicable Margin in respect of any Extended Loan shall be the applicable percentages per annum set forth in the relevant Extension Amendment.

"**Applicable Other Indebtedness**" shall have the meaning assigned to such term in Section 2.10(i).

"**Applicable Prepayment Premium**" shall mean the principal amount of such prepayment multiplied by (I) two percent (2.0%), with respect to prepayments made on or after the Closing Date but prior to the first anniversary of the Closing Date, (II) one percent (1.00%) with respect to prepayments made on or after the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date, (III) one percent (1.00%) with respect to prepayments made on or after the second anniversary of the Closing Date but prior to the third anniversary of the Closing Date and (IV) thereafter zero percent (0.0%); *provided* that, following an acceleration occurring prior to the third anniversary of the Closing Date, the principal amount that was accelerated shall be deemed prepaid for purposes of the calculation of the Applicable Prepayment Premium.

"**Applicable Tax Laws**" shall mean the Code and any other applicable Requirement of Law relating to Taxes, as in effect from time to time.

"**Approved Fund**" shall mean any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity, or an Affiliate of an entity, that administers, advises or manages a Lender.

"**Article 55 BRRD**" shall mean Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"**Asset Sale**" shall mean any conveyance, sale, transfer or other disposition of any property (including Equity Interests of a Group Member) other than as permitted pursuant to Section 6.05 (other than Section 6.05(b) and (q)), and in any event "Asset Sales" shall exclude Casualty Events of any Group Member.

"**Asset Sale/Casualty Event Threshold**" shall have the meaning assigned to such term in Section 2.10(c)(i).

"**Assignment and Assumption**" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.04(b)), and accepted by the Administrative Agent, in substantially the form (including electronic documentation generated by use of an electronic platform) of Exhibit A, or any other form approved by the Administrative Agent.

"**Attributable Indebtedness**" shall mean, when used with respect to any Sale Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to the Borrower's then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale Leaseback Transaction.

"**Available Retained ECF Amount**" shall mean, at any date of determination, the portion of Excess Cash Flow, determined on a cumulative basis for all fiscal years of the Borrower (commencing with the fiscal year ending December 31, 2022) that was not required to be applied to prepay Loans pursuant to Section 2.10(f) or to prepay any other Indebtedness pursuant to Section 2.10(i) on account of Section 2.10(f); provided that in no event shall the "Available Retained ECF Amount" be less than $0.

"**Bail-In Action**" shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"**Bail-In Legislation**" shall mean (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Code**" shall mean the Federal Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. §§ 101 et seq. and the regulations issued thereunder.

"**Base Rate**" shall mean a rate per annum equal to the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent).

"**Beneficial Ownership Certification**" shall mean a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, which certification shall be substantially similar to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

"**Beneficial Ownership Regulation**" shall mean 31 C.F. R. § 1010.230.

"**Benefit Plan**" shall mean any of (a) an Employee Benefit Plan that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such Employee Benefit Plan or "plan".

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States.

"**Board of Directors**" shall mean, with respect to any person, (a) in the case of any corporation, the board of directors of such person, (b) in the case of any limited liability company, the board of managers, manager or managing member of such person, (c) in the case of any partnership, the general partner of such person and (d) in any other case, the functional equivalent of the foregoing.

"**Borrower**" shall have the meaning assigned to such term in the preamble hereto.

"**Borrowing**" shall mean Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"**Borrowing Request**" shall mean a written request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form (including electronic documentation generated by the use of an electronic platform) as shall be approved by the Administrative Agent (which approval shall not be unreasonably withheld).

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law to close; *provided*, *however*, that when used in connection with a Eurodollar Loan, the term "**Business Day**" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"**Capital Assets**" shall mean, with respect to any person, all equipment, rolling stock, aircraft, fixed assets and Real Property or improvements of such person, or replacements or substitutions therefor or additions thereto, that, in accordance with GAAP, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such person.

"**Capital Expenditures**" shall mean, for any period, the aggregate of, without duplication, (a) all expenditures (whether paid in cash or accrued as liabilities) by the Borrower and its Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as additions during such period to property, plant or equipment reflected in the consolidated balance sheet of the Borrower and its Restricted Subsidiaries and (b) Capital Lease Obligations incurred by the Borrower and its Restricted Subsidiaries during such period.

"**Capital Lease Obligations**" shall mean, at the time any determination thereof is to be made, the amount of the liability in respect of a Capital Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP as in effect on December 31, 2018.

"**Capital Leases**" shall mean all leases that are required to be, in accordance with GAAP as in effect on December 31, 2018, recorded as capitalized leases; *provided* that the adoption or issuance of any accounting standards after such date will not cause any lease that was not or would not have been a Capital Lease prior to such adoption or issuance to be deemed a Capital Lease.

"**Cash Equivalents**" shall mean, as to any person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any political subdivision, agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) securities issued, or directly, unconditionally and fully guaranteed or insured, by any state of the United States or any political subdivision of any such state or any public instrumentality thereof (*provided* that the full faith and credit of such state is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (c) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 and a rating of "A" (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person, and securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of this clause (c); (d) repurchase obligations for underlying securities of the types described in clauses (a), (b) or (c) above entered into with any bank meeting the qualifications specified in clause (c) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; (e) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, and in each case maturing not more than one year after the date of acquisition by such person; (f) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (e) above, or that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, as amended, (ii) are rated AAA by S&P or Aaa by Moody's and (iii) have portfolio assets of at least $500,000,000; and (g) demand deposit accounts maintained in the ordinary course of business.

"**Casualty Event**" shall mean any involuntary loss of title, any involuntary loss of, damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of any Group Member. "**Casualty Event**" shall include but not be limited to any taking of all or any part of any Real Property of any Person, in or by condemnation or other eminent domain proceedings pursuant to any Requirements of Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any Person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

"**CFC**" shall mean a Foreign Subsidiary that is a controlled foreign corporation within the meaning of Section 957 of the Code.

"**CFC Holding Company**" shall mean any (a) Subsidiary of the Borrower, substantially all of the assets of which consist of (i) Equity Interests (including any debt instrument treated as equity for U.S. federal income tax purposes) or (ii) Equity Interests (including any debt instrument treated as equity for U.S. federal income tax purposes) and debt instruments, in the case of clauses (a)(i) and (a)(ii), of one or more CFCs and (b) any Subsidiary of the Borrower, substantially all of the assets of which consists of (i) Equity Interests (including any debt instrument treated as equity for U.S. federal income tax purposes) or (ii) Equity Interests (including any debt instrument treated as equity for U.S. federal income tax purposes) and debt instruments, in the case of clauses (b)(i) and (b)(ii), of one or more other Subsidiaries of the type referred to in the immediately preceding clause (a).

A "**Change in Control**" shall be deemed to have occurred if:

(a) any "**person**" or "**group**" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) (i) is or becomes the beneficial owner (as defined in Rules 13d-3 (other than clause (b) thereof) and 13d-5 under the Exchange Act, except that for purposes of this clause such person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 35% or more of the Equity Interests of the Borrower or the Voting Stock of the Borrower, (ii) has or acquires the power to vote (or direct the voting of) directly or indirectly more than 35% of the Voting Stock of the Borrower or (iii) has or acquires the power to appoint or remove a majority of the Board of Directors of the Borrower;

(b) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole, to any Person other than the Borrower or a Guarantor; or

(c) a "Change in Control" (or equivalent term) as defined in the definitive debt documentation for (i) any Indebtedness secured by the Collateral on a junior basis to the Secured Obligations or any Indebtedness that is unsecured, (ii) Permitted Pari Passu Refinancing Debt or Permitted Unsecured Refinancing Debt or (iii) Indebtedness incurred pursuant to a Permitted Refinancing of any of the foregoing shall occur; *provided* that, solely in the case of any Indebtedness described in clause (c)(i) above or any Indebtedness incurred pursuant to a Permitted Refinancing thereof, so long as the aggregate principal amount of such Indebtedness exceeds $10,000,000.

For purposes of this definition, a person acquiring Voting Stock shall not be deemed to have beneficial ownership of such Voting Stock subject to a stock purchase agreement, merger agreement or similar agreement, so long as such agreement contains a condition to the closing of the transactions contemplated thereunder that the Obligations shall be Paid in Full and the Commitments hereunder terminated prior to (or contemporaneously with) the consummation of such transactions.

"**Change in Law**" shall mean (a) the adoption of, or taking effect of, any law, treaty, order, rule or regulation after the date hereof, (b) any change in any law, treaty, order, rule or regulation or in the administration, interpretation, implementation or application thereof by any Governmental Authority after the date hereof or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date hereof; *provided* that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "**Change in Law**," regardless of the date enacted, adopted or issued.

"**Charges**" shall have the meaning assigned to such term in the definition of "Consolidated EBITDA".

"**Closing Date**" shall mean April 8, 2021.

"**Closing Date Acquisition**" shall have the meaning assigned to such term in the recitals hereto.

"**Closing Date Acquisition Agreement**" shall have the meaning assigned to such term in the recitals hereto.

"**Closing Date Acquisition Documents**" shall mean the Closing Date Acquisition Agreement and all material documents and agreements related thereto or expressly contemplated thereby (in each case, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in a manner permitted hereunder).

"**Closing Date Refinancing**" shall mean repayment in full of all outstanding indebtedness under that certain Loan and Security Agreement] by and between Silicon Valley Bank and Punchh Inc., dated as of October 26, 2016 (as amended, restated, supplemented or otherwise modified from time to time).

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Collateral**" shall mean, collectively, all of the Security Agreement Collateral and all other property of whatever kind and nature, whether now owned or hereinafter acquired, subject or purported to be subject from time to time to a Lien under any Security Document and in each case other than Excluded Property.

"**Collateral Agent**" shall have the meaning assigned to such term in the preamble hereto, and include each other person appointed as a successor thereto pursuant to Article IX. For purposes of Article IX only, references to the Administrative Agent shall be deemed to also refer to the Collateral Agent unless the context requires otherwise.

"**Commitment**" shall mean, with respect to any Lender, (a) its obligation to make its portion of Loans to the Borrower in the amount set forth on Annex A, and (b) unless the context shall otherwise require, any Incremental Loan Commitments made pursuant to Section 2.20 after the Closing Date. The initial aggregate amount of the Commitments as of the date hereof is $180,000,000.

"**Commodity Exchange Act**" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Communications**" shall have the meaning assigned to such term in Section 10.01(d).

"**Company Owned IP**" shall mean all Intellectual Property Rights owned by the Borrower or any Restricted Subsidiary.

"**Company Proprietary Software**" shall mean any and all computer programs, including any and all software implementations of algorithms, models and methodologies, whether accessed locally or remotely, whether in source code or object code for which the underlying Intellectual Property Rights are Company Owned IP.

"**Competitor**" shall mean any person that (x) is not a commercial bank, finance company, insurance company, financial institution or other similar entity, in each case that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of business and (y) is an operating company directly engaged in substantially similar business operations as the Borrower and its Subsidiaries (or is a direct or indirect holding company thereof).

"**Compliance Certificate**" shall mean a certificate of a Financial Officer substantially in the form of Exhibit C.

"**Consolidated Amortization Expense**" shall mean, for any period, the amortization expense of Borrower and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, and including, without limitation, amortization of goodwill, software and other intangible assets.

"**Consolidated Current Assets**" shall mean, as at any date of determination, the total assets of the Borrower and its Restricted Subsidiaries which may properly be classified as current assets (excluding deferred tax assets without duplication of amounts otherwise added in calculating Excess Cash Flow) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries in accordance with GAAP, excluding (i) cash, (ii) Cash Equivalents, (iii) Hedging Agreements to the extent that the mark-to-market termination value would be reflected as an asset on the consolidated balance sheet of such Person, (iv) deferred financing fees, (v) amounts related to current or deferred taxes (but excluding assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments) (so long as the items described in clauses (iv) and (v) are non-cash items); provided that Consolidated Current Assets shall be calculated without giving effect to the impact of purchase accounting.

"**Consolidated Current Liabilities**" shall mean, as at any date of determination, the total liabilities (excluding (a) deferred taxes and taxes payable, in each case, without duplication of amounts otherwise deducted in calculating Excess Cash Flow, (b) the current portion of consolidated deferred revenue, (c) accruals of any costs or expenses related to restructuring reserves or severance, (d) escrow account balances, (e) the current portion of pension liabilities, (f) liabilities in respect of unpaid earn-outs, (g) amounts related to derivative financial instruments and assets held for sale, and (h) any letter of credit obligations or revolving loans under any revolving credit facility) of the Borrower and its Restricted Subsidiaries which may properly be classified as current liabilities (other than the current portion of any Indebtedness and other long term liabilities, and accrued interest thereon) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries in accordance with GAAP; provided that Consolidated Current Liabilities shall be calculated without giving effect to the impact of purchase accounting.

"**Consolidated Depreciation Expense**" shall mean, for any period, the depreciation expense of Holdings and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"**Consolidated EBITDA**" shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) adding thereto, in each case only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income (other than in respect of clauses (f), (o) and (s) below) and without duplication:

(a) Consolidated Interest Expense;

(b) Consolidated Amortization Expense;

(c) Consolidated Depreciation Expense;

(d) Consolidated Tax Expense;

(e) out-of-pocket fees (to the extent not capitalized), costs, charges and expenses directly incurred in connection with the Transactions;

(f) "run rate" cost savings, operating expense reductions, other operating improvements and initiatives and synergies that are reasonably anticipated by the Borrower (as reasonably determined by the Borrower in good faith and certified by a Financial Officer of the Borrower) to be realized after any acquisition (including the commencement of activities constituting a business) or disposition (including the termination or discontinuance of activities constituting a business), in each case of business entities or of properties or assets constituting a division or line of business (including, without limitation, a product line), and/or any other operational change (including, to the extent applicable, in connection with the Transactions or any restructuring) within 12 months after such period, in each case, whether such action has been taken or is reasonably expected to be taken (which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a Pro Forma Basis as though such synergies, cost savings, operating expense reductions, other operating improvements and initiatives had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that (i) for the avoidance of doubt, with respect to operational changes that are not associated with any acquisition or disposition, the "run rate" cost savings, operating expense reductions, other operating improvements and initiatives and synergies associated with such operational change shall be limited to those that are reasonably anticipated by the Borrower to be realized after the date on which such operational change is planned or otherwise identified by the Borrower in good faith within 12 months after such period, (ii) to the extent that such cost savings, operating expense reductions, other operating improvements and initiatives and synergies are no longer anticipated by the Borrower to be realized following the relevant acquisition, disposition or operational change or, in the case of operational changes that are not associated with an acquisition or disposition, after the date on which such operational change is planned or otherwise identified by the Borrower in good faith, in each case, within 12 months after such period, such amounts shall no longer be added back to Consolidated EBITDA and (iii) amounts added back to Consolidated EBITDA pursuant to this clause (f) (taken together with (i) cash Charges added back to Consolidated EBITDA pursuant to clause (m) and clause (n) and (ii) addbacks pursuant to the second paragraph of the definition of "Pro Forma Basis") shall not, in the aggregate, exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined prior to giving effect thereto);

(g) any charges, expenses, costs, accruals, reserves, payments, fees and expenses or loss of any kind ("**Charges**") (including rationalization, legal, tax, structuring and other costs and expenses) (other than depreciation or amortization expense) related to any permitted consummated, anticipated, unsuccessful or attempted securities offering, issuance, repurchase, conversion, exercise, other Equity Issuance, incurrence by Borrower or any of its Restricted Subsidiaries of Indebtedness (including an amendment thereto or a refinancing thereof, whether or not successful, and any costs of surety bonds incurred in connection with successful or unsuccessful financing activities), Dividend (including the amount of expenses relating to payments made to holders of options or other equity-based compensation awards of any direct or indirect parent of the Borrower in connection with, or as a result of, any distribution being made to equityholders of such Person, which payments are being made to compensate such holders of options or other equity-based compensation awards as though they were equityholders at the time of, and entitled to share in, such distribution), Investment, acquisition (including the Closing Date Acquisition and any Permitted Acquisition or other Investments) (including fees, costs and expenses incurred in connection with the delisting of public targets or compliance with public company requirements in connection with any Permitted Acquisition, or other Investment, and, if applicable, any Public Company Costs), Asset Sale or other disposition, repayment of Indebtedness (including Restricted Debt Payments and the repurchase or redemption of any convertible notes), recapitalization or the breakage of any hedging arrangement permitted hereunder or the incurrence of Indebtedness permitted to be incurred hereunder (including a refinancing thereof) (in each case, whether or not successful), and in each case, to the extent the applicable transaction or event is permitted hereunder, including such fees, expenses, costs or Charges related to (i) the offering, syndication, assignment and administration of the loans under the Loan Documents and any other credit facilities (including, and together with, Charges of S&P, Moody's or any other nationally recognized ratings agency, if applicable) and (ii) any refinancing, extension, waiver, forbearance, amendment or other modification of any derivative securities and any other credit facilities (in each case, whether consummated, anticipated, unsuccessful, attempted or otherwise);

(h) (i) any non-cash Charges, impairment Charges (including bad debt expense), write-downs, write-offs, expenses, losses or items (including, without limitation, purchase accounting adjustments under ASC 805 or similar recapitalization accounting or acquisition accounting under GAAP or similar provisions under GAAP, or any amortization or write-off of any amounts thereof (including, without limitation, with respect to inventory, property and equipment, leases software, goodwill, intangible assets, in-process research and development, deferred revenue, advanced billings and debt line items)) (including any (x) non-cash expense relating to the vesting of warrants, (y) non-cash asset retirement costs, and (z) non-cash increase in expenses resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods) or other inventory adjustments), including any such charges, impairment charges, write-downs, write-offs, expenses, losses or items pushed down to Borrower and its Restricted Subsidiaries, (ii) net non-cash exchange, translation or performance losses relating to foreign currency transactions and foreign exchange adjustments including, without limitation, losses and expenses in connection with, and currency and exchange rate fluctuations and losses or other obligations from, hedging activities or other derivative instruments, and (iii) cash Charges resulting from the application of ASC 805, in each case, by Borrower or its Restricted Subsidiaries, paid or accrued during the applicable period);

(i) (i) the amount of payments made to option holders, stock holders or restricted stock unit holders of Borrower in connection with, or as a result of, any distribution being made to shareholders of such person, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted in the Loan Documents, and (ii) directors' fees and expenses paid or accrued by Borrower or its Restricted Subsidiaries or, to the extent paid or accrued with respect to services that relate directly to Borrower or its Restricted Subsidiaries and paid for with amounts distributed by Borrower and its Restricted Subsidiaries, of any direct or indirect parent thereof;

(j) Charges that are covered by indemnification, reimbursement, guaranty, purchase price adjustment or other similar provisions in favor of Borrower or its Restricted Subsidiaries in any agreement entered into by Borrower or any of its Restricted Subsidiaries to the extent such expenses and payments have been reimbursed pursuant to the applicable indemnity, guaranty or acquisition agreement in such period or an earlier period if not added back to Consolidated EBITDA in such earlier period;

(k) Charges related to any refinancing, extension, waiver, forbearance, amendment or other modification of the Loan Documents (whether or not consummated or successful);

(l) the aggregate amount of proceeds of business interruption insurance received from an unaffiliated insurance company in cash by Borrower or one of its Restricted Subsidiaries during such period to the extent not already included in Consolidated Net Income;

(m) any exceptional, extraordinary, unusual or non-recurring expenses, losses or Charges incurred; provided that, cash amounts added back to Consolidated EBITDA pursuant to this clause (m) (taken together with (i) cash Charges added back to Consolidated EBITDA pursuant to clause (n) and (ii) addbacks pursuant to clause (f)(y) of Consolidated EBITDA and the second paragraph of the definition of "Pro Forma Basis") shall not, in the aggregate, exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined prior to giving effect thereto);

(n) restructuring Charges, carve-out costs, severance costs, integration costs, retention, recruiting, relocation, signing bonuses and expenses, stock option and other equity-based compensation expenses, accruals or reserves (including restructuring costs related to Permitted Acquisitions and other Investments permitted hereunder and adjustments to existing reserves), any one time expense relating to enhanced accounting function, the closure and/or consolidation of facilities and existing lines of business and optimization expense and Public Company Costs; provided that, cash amounts added back to Consolidated EBITDA pursuant to this clause (n) (taken together with (i) cash Charges added back to Consolidated EBITDA pursuant to clause (m) and (ii) addbacks pursuant to clause (f)(y) of Consolidated EBITDA and the second paragraph of the definition of "Pro Forma Basis") shall not, in the aggregate, exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined prior to giving effect thereto);

(o) [reserved];

(p) non-cash costs and expenses relating to any equity-based compensation or equity-based incentive plan of Borrower (or its direct or indirect parent company) or any of its Restricted Subsidiaries;

(q) [reserved];

(r) letter of credit fees;

(s) [reserved];

(t) net realized losses from Hedging Agreements or embedded derivatives that require similar accounting treatment;

(u) any net loss included in Consolidated Net Income attributable to noncontrolling interests in any non-Wholly Owned Subsidiary or any joint venture;

(v) all cash actually received (or any netting arrangements resulting in reduced cash expenditures) during the relevant period and not included in Consolidated Net Income in respect of any non-cash gain deducted in the calculation of Consolidated EBITDA (including any component definition) for any previous period and not added back during such period; and

(w) (i) reasonable and documented Charges incurred in connection with the implementation of ASC 606 and (ii) any non-cash Charges and transitional adjustments resulting from the application of ASC 606;

and (y) *subtracting therefrom*, in each case (other than pursuant to clause (D) below) only to the extent (and in the same proportion) added in determining such Consolidated Net Income and without duplication, the aggregate amount of (A) all non-cash items increasing Consolidated Net Income for such period (other than the accrual of revenue or recording of receivables in the ordinary course of business), (B) any extraordinary, unusual or non-recurring gains increasing Consolidated Net Income for such period, (C) any net realized income or gains from any obligations under any Hedging Agreement or embedded derivatives that require similar accounting treatment, (D) any capitalized content development costs and capitalized technology costs incurred during such period that, in each case, do not reduce Consolidated Net Income during such period; *provided* that, for the avoidance of doubt, all such amounts shall be added back in determining Consolidated EBITDA pursuant to clause (x)(b) above in the period in which they are recognized in determining Consolidated Net Income, (E) the amount of any minority interest net income attributable to non-controlling interests in any non-Wholly Owned Subsidiary or any joint venture, and (F) any non-cash gains resulting from the application of ASC 606 and any positive transitional adjustments resulting therefrom.

Notwithstanding anything to the contrary, (i) it being agreed that for purposes of calculating any financial ratio or test in connection with a Subject Transaction, Consolidated EBITDA shall be calculated on a Pro Forma Basis in a manner consistent with Consolidated EBITDA for each quarterly period set forth above and the adjustments set forth above in this definition, (ii) other than for purposes of calculating Excess Cash Flow, Consolidated EBITDA shall be calculated on a Pro Forma Basis to give effect to any Subject Transaction as if it occurred on the first day of the reference period and (iii) no addbacks shall be permitted for (x) cash Charges to the extent that a corresponding addback was taken during the period that any such amount was accrued and (y) impairment charges, write-downs and write-offs with respect to inventory.

"**Consolidated First Lien Debt**" shall mean the aggregate amount of Consolidated Total Funded Indebtedness that is secured by a Lien on the Collateral on a *pari passu* basis with the Liens on the Collateral securing the Loans.

"**Consolidated Interest Expense**" shall mean, for any period, the total consolidated interest expense of the Borrower and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP *plus*, without duplication:

(a) imputed interest on Capital Lease Obligations and Attributable Indebtedness of the Borrower and its Restricted Subsidiaries for such period;

(b) commissions, discounts and other fees, costs and charges owed by the Borrower or any of its Restricted Subsidiaries with respect to letters of credit, and bankers' acceptance financings or receivables financings for such period;

(c) amortization of costs in connection with the incurrence by the Borrower or any of its Subsidiaries of Indebtedness, debt discount or premium and other financing fees and expenses incurred by the Borrower or any of its Restricted Subsidiaries for such period;

(d) cash contributions to any employee stock ownership plan or similar trust made by the Borrower or any of its Restricted Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than the Borrower or any of its Restricted Subsidiaries) in connection with Indebtedness incurred by such plan or trust for such period;

(e) all interest paid or payable with respect to discontinued operations of the Borrower or any of its Restricted Subsidiaries for such period;

(f) the interest portion of any deferred payment obligations of the Borrower or any of its Restricted Subsidiaries for such period; and

(g) all interest on any Indebtedness of the Borrower or any of its Restricted Subsidiaries of the type described in clauses (f) or (i) of the definition of "Indebtedness" for such period;

provided that (a) to the extent directly related to the Transactions, debt issuance costs, debt discount or premium and other financing fees and expenses shall be excluded from the calculation of Consolidated Interest Expense and (b) Consolidated Interest Expense shall be calculated after giving effect to Hedging Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to Hedging Agreements related to interest rates.

Consolidated Interest Expense shall be calculated on a Pro Forma Basis to give effect to any Indebtedness (other than Indebtedness incurred for ordinary course working capital needs under ordinary course revolving credit facilities) incurred, assumed or permanently repaid or prepaid or extinguished at any time on or after the first day of the Test Period and prior to the date of determination in connection with the Transactions, any Permitted Acquisitions, Asset Sales or other dispositions (other than any Asset Sales or other dispositions in the ordinary course of business), and discontinued division or line of business (including, without limitation, a product line) or operations as if such incurrence, assumption, repayment or extinguishing had been effected on the first day of such period in each case to the extent permitted by this Agreement.

"**Consolidated Net Income**" shall mean, for any period, the consolidated net income (or loss) attributable to the Borrower and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

(a) the net income (or loss) of any person that is not the Borrower or a Restricted Subsidiary of the Borrower, except to the extent that cash in an amount equal to any such income has actually been received by the Borrower or (subject to clause (b) below) any of its Restricted Subsidiaries during such period;

(b) the net income of any Restricted Subsidiary of the Borrower that is not the Borrower or a Guarantor during such period to the extent that the declaration or payment of Dividends or similar distributions by such Restricted Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement (other than this Agreement, any other Loan Document or any refinancings of any of the foregoing, or the documentation governing any other Indebtedness permitted hereunder (including under Section 6.10)), instrument, or Requirements of Law applicable to that Restricted Subsidiary or its equity holders during such period (unless such restriction or limitation has been waived), except that the Borrower's equity in the net loss of any such Restricted Subsidiary for such period shall be included in determining Consolidated Net Income;

(c) any foreign currency translation gains or losses (including losses related to currency remeasurements of Indebtedness);

(d) unrealized gains and losses, and the impact of any revaluation, with respect to Hedging Obligations; and

(e) gains or losses due solely to the cumulative effect of any change in accounting principles (effected either through cumulative effect adjustment or retroactive application, in each case, in accordance with GAAP) and changes as a result of the adoption or modification of accounting policies during such period.

"**Consolidated Secured Debt**" shall mean the aggregate amount of Consolidated Total Funded Indebtedness that is secured by a Lien.

"**Consolidated Total Assets**" shall mean, as of any date, the total property and assets of the Borrower and its Restricted Subsidiaries, determined in accordance with GAAP, as set forth on the consolidated balance sheet of the Borrower most recently delivered pursuant to Section 5.01(a) or (b) as applicable (on a Pro Forma Basis after giving effect to any Permitted Acquisitions or any Investments or dispositions permitted hereunder or by the other Loan Documents).

"**Consolidated Total Funded Indebtedness**" shall mean, as of any date of determination, for the Borrower and its Restricted Subsidiaries determined on a consolidated basis, the sum of, without duplication, (a) the aggregate principal amount of all funded Indebtedness for borrowed money, (b) all Purchase Money Obligations (other than in respect of Capital Lease Obligations), (c) the principal portion of Capital Lease Obligations and (d) letters of credit (to the extent of any unreimbursed amounts thereunder) that are not paid when the same become due and payable. Notwithstanding the foregoing, in no event shall the following constitute "Consolidated Total Funded Indebtedness": (i) obligations under any derivative transaction or other Hedging Agreement, (ii) undrawn letters of credit, (iii) Earn-Outs to the extent not then due and payable if not recognized as debt on the balance sheet in accordance with GAAP and (iv) leases that would be characterized as operating leases in accordance with GAAP on the date hereof.

"**Contingent Obligation**" shall mean, as to any person, any obligation or agreement of such person guaranteeing or intended to guarantee any Indebtedness, leases, Dividends or other obligations ("**primary obligations**") of any other person (the "**primary obligor**") in any manner, whether directly or indirectly, including any such obligation or agreement of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers' acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties or other similar contingent obligations incurred in the ordinary course of business, including indemnities. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "**Controlling**" and "**Controlled**" shall have meanings correlative thereto.

"**Credit Agreement Refinancing Indebtedness**" shall mean (a) Permitted Pari Passu Refinancing Debt or (b) Permitted Unsecured Refinancing Debt obtained pursuant to a Refinancing Amendment and/or separate credit documentation to the extent such Indebtedness is to be governed by separate documentation, in each case, issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part, existing Loans, Incremental Loans, or Refinancing Loans, hereunder (including any successive Credit Agreement Refinancing Indebtedness) ("**Refinanced Debt**"); *provided* that (i) such extending, renewing or refinancing Indebtedness is in an original aggregate principal amount not greater than (A) the aggregate principal amount of the Refinanced Debt, plus (B) accrued and unpaid interest thereon, any fees, premiums, accrued interest associated therewith, or other reasonable amount paid, and fees, costs and expenses, commissions or underwriting discounts incurred in connection therewith, (ii) the terms applicable to such extending, renewing or refinancing Indebtedness comply with the Required Debt Terms, (iii) such Refinanced Debt (other than unasserted contingent indemnification or reimbursement obligations and letters of credit that have been cash collateralized or backstopped in accordance with the terms thereof) shall be repaid, defeased or satisfied and discharged, and (unless otherwise agreed by all Lenders holding such Refinanced Debt) all accrued interest, fees and premiums (if any) in connection therewith shall be paid substantially concurrently with the issuance or incurrence of such Credit Agreement Refinancing Indebtedness, (iv) if any Refinanced Debt is unsecured, such Credit Agreement Refinancing Indebtedness shall also be unsecured and (v) such Indebtedness is used solely for the substantially concurrent and *pro rata* replacement or refinancing of the Refinanced Debt and such other amounts set forth in clause (i)(B) above applicable to such Refinanced Debt.

"**Credit Extension**" shall mean the making of a Loan by a Lender.

"**Credit Parties**" shall mean the Borrower and the Guarantors; and "**Credit Party**" shall mean any one of them.

"**Cure Amount**" shall have the meaning assigned to such term in Section 8.03(a).

"**Cure Expiration Date**" shall have the meaning assigned to such term in Section 8.03(a).

"**Debt Issuance**" shall mean the incurrence by the Borrower or any of its Restricted Subsidiaries of any Indebtedness after the Closing Date (other than Indebtedness permitted by Section 6.01 (other than Credit Agreement Refinancing Indebtedness which shall, for the avoidance of doubt, constitute a Debt Issuance)).

"**Debtor Relief Law**" shall mean the Bankruptcy Code (including Title 11 of the United States Code, as now constituted or hereafter amended) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"**Declined Proceeds**" shall have the meaning assigned to such term in Section 2.10(j).

"**Default**" shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

"**Default Rate**" shall have the meaning assigned to such term in Section 2.06(c).

"**Deposit Account**" shall have the meaning assigned to such term in the Security Agreement.

"**Designated Noncash Consideration**" shall mean as of any date of determination the fair market value at the time received (as determined in good faith by the Borrower) of any non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is designated in writing as Designated Noncash Consideration, less the amount of cash or Cash Equivalents received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Noncash Consideration. A particular item of Designated Noncash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 6.05.

"**Disqualified Capital Stock**" shall mean any Equity Interest which, by its terms (or by the terms of any security or any other Equity Interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, would (i) mature or be mandatorily redeemable (other than solely for Qualified Capital Stock) pursuant to a sinking fund obligation or otherwise (except as a result of a customarily defined change of control or asset sale and only so long as any rights of the holders thereof after such change of control or asset sale shall be subject to the Payment in Full of the Obligations), (ii) be redeemable at the option of the holder thereof (other than solely for Qualified Capital Stock), in whole or in part, (iii) provide for scheduled payments of dividends in cash or (iv) be or become convertible into or exchangeable for Indebtedness or any other Disqualified Capital Stock, in whole or in part, in each case on or prior to the date that is 91 days after the Latest Maturity Date at the time of issuance.

"**Disqualified Institutions**" shall mean (i) Competitors of the Borrower and its Subsidiaries specified to the Lead Arranger in writing from time to time, (ii) any Persons that are engaged as principals primarily in private equity, mezzanine financing or venture capital and certain banks, financial institutions, other institutional lenders and other entities, in each case, that have been specified to the Lead Arranger in writing prior to the Closing Date (and, which list may be updated on and after the Closing Date, with the Administrative Agent's consent (such consent not to be unreasonably withheld, conditioned or delayed)) and (iii) as to any entity referenced in each case of clauses (i) and (ii) above (the "**Primary Disqualified Institution**"), any of such Primary Disqualified Institution's known affiliates or affiliates identified in writing to the Lead Arranger from time to time or otherwise readily identifiable by name, but excluding any affiliate that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which the Primary Disqualified Institution does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity (provided, that any additional designation permitted by the foregoing shall not apply retroactively to any prior assignment to any Lender (or prior participation in the Loans); *provided*, *further*, that the list of Disqualified Institutions shall be made available to any Lender upon written request (it being understood that the identity of Disqualified Institutions will not be posted or distributed to any Person, other than a distribution by the Administrative Agent to a Lender upon written request).

"**Disregarded Entity**" shall mean any entity treated as disregarded as an entity separate from its owner under Treasury Regulations Section 301.7701-3.

"**Dividend**" shall mean, with respect to any person, that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside or otherwise reserved, directly or indirectly, any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the outstanding Equity Interests of such person (or any options or warrants issued by such person with respect to its Equity Interests).

"**Dollars**," "**dollars**" or "**$**" shall mean lawful money of the United States.

"**Domestic Subsidiary**" shall mean any Subsidiary that is organized under the laws of the United States, any state thereof or the District of Columbia.

"**Earn-Outs**" shall mean, with respect to a Permitted Acquisition or any other acquisition of any assets or Property by any Group Member permitted hereunder, that portion of the purchase consideration therefor and that portion of all other payments and liabilities (whether payable in cash or by exchange of Equity Interests or of any Property or otherwise), directly or indirectly, payable by any Group Member in exchange for, or as part of, or in connection with, such Permitted Acquisition or such other acquisition, as the case may be, that is deferred for payment to a future time after the consummation of such Permitted Acquisition or such other acquisition, as the case may be, and includes any and all payments representing the purchase price and any assumptions of Indebtedness, Earn-Outs and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business.

"**ECF Payment Amount**" shall have the meaning assigned to such term in Section 2.10(f).

"**EEA Financial Institution**" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" shall mean any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Assignee**" shall mean (i) any Lender, (ii) an Affiliate of any Lender, (iii) an Approved Fund, and (iv) any other person approved by the Administrative Agent and the Borrower (each such consent not to be unreasonably withheld, conditioned or delayed; it being understood that the Borrower shall have absolute consent rights with regard to any proposed assignment to a Disqualified Institution); *provided* that, (1) no approval of the Borrower (other than with respect to Disqualified Institutions) shall be required during the continuance of an Event of Default under Section 8.01(a), (b), (d) (solely with respect to the failure to comply with Section 6.08), (g), (h) or (m) (solely with respect to the failure to comply with the financial reporting requirements set forth in Section 5.01(a), (b) or (c)), (2) to the extent the consent of the Borrower is required for any assignment, such consent shall be deemed to have been given (except with respect to Disqualified Institutions) if the Borrower has not responded within ten (10) Business Days of a written request for such consent, (3) no approval of the Borrower shall be required with respect to assignment of Loans to another Lender, an Affiliate of any Lender or an Approved Fund and (4) notwithstanding anything to the contrary herein, "Eligible Assignee" shall not include at any time any Disqualified Institutions (unless consented to in writing by the Borrower in its sole discretion) or any natural person.

"**Eligible Equity Issuance**" shall mean an issuance and sale of Qualified Capital Stock of the Borrower following the Closing Date.

"**Employee Benefit Plan**" shall mean each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) that is maintained or contributed to by, or required to be contributed by, a Group Member or with respect to which a Group Member has any liability (including on account of an ERISA Affiliate).

"**Environment**" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands) and the land surface.

"**Environmental Claim**" shall mean any claim, notice, demand, order, action, suit or proceeding relating to any investigation, remediation, removal, cleanup, response, corrective action, penalties or other costs (including damages, natural resources damages, contribution, indemnification, cost recovery, compensation or injunctive relief) resulting from, related to or arising out of (i) the presence, Release or threatened Release of Hazardous Material, (ii) any violation or alleged violation of any Environmental Law, or (iii) any actual or alleged exposure to Hazardous Materials.

"**Environmental Law**" shall mean all applicable Requirements of Law relating to pollution or protection of the Environment, or to the Release or threatened Release of Hazardous Materials.

"**Environmental Permit**" shall mean any permit, license, approval, registration, consent or other authorization required by or from a Governmental Authority under Environmental Law.

"**Equity Cure Contribution**" shall have the meaning assigned to such term in Section 8.03(a).

"**Equity Interest**" shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting and whether or not represented by a certificate), of equity of such person, including warrants, options and other rights to purchase and including, if such person is a limited liability company, membership interests or if such person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued after the Closing Date; *provided* that "Equity Interest" shall not include at any time (i) debt securities convertible or exchangeable into such equity until such debt securities have been converted pursuant to the terms thereof or (ii) Earn-Outs.

"**Equity Issuance**" shall mean, without duplication, (a) any issuance or sale by the Borrower of any Equity Interests in the Borrower (including any Equity Interests issued upon the exercise of any warrant or option or equity-based derivative) or any warrants or options or equity-based derivatives to purchase Equity Interests of the Borrower or (b) any contribution to the capital of the Borrower.

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and the rules and regulations promulgated thereunder.

"**ERISA Affiliate**" shall mean, with respect to any person, any trade or business (whether or not incorporated) that, together with such person, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 412 of the Code, Section 414(m) or (o) of the Code.

"**ERISA Event**" shall mean (a) any "reportable event," as defined in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure to satisfy the minimum funding standard of Section 412 or 430 of the Code and Section 302 or 303 of ERISA, whether or not waived; (c) the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the determination that any Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (e) the incurrence by any Group Member or any of its ERISA Affiliates of a Lien or any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by any Group Member or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (g) the complete or partial withdrawal (within the meanings of Sections 4203 and 4205 of ERISA) of a Group Member or ERISA Affiliate from any Multiemployer Plan; (h) the receipt by any Group Member or any of its ERISA Affiliates of any notice concerning a determination that a Multiemployer Plan is, or is reasonably expected to be, insolvent (within the meaning of Section 4245 of ERISA) or in "critical" or "endangered" status, under Section 432 of the Code or Section 305 of ERISA; (i) the withdrawal of any Group Member or ERISA Affiliate thereof from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (j) the occurrence of non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any Group Member (other than any non-exempt prohibited transaction resulting from any Loan being funded with "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans); or (k) a Foreign Benefit Event.

"**Erroneous Payment**" shall have the meaning assigned to such term in Section 9.13(a).

"**Erroneous Payment Deficiency Assignment**" has the meaning assigned to it in Section 9.13(d).

"**Erroneous Payment Impacted Class**" has the meaning assigned to it in Section 9.13(d).

"**Erroneous Payment Return Deficiency**" has the meaning assigned to it in Section 9.13(d).

"**Erroneous Payment Notice**" shall have the meaning assigned to such term in Section 9.13(a).

"**EU Bail-In Legislation Schedule**" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Eurodollar Borrowing**" shall mean a Borrowing comprised of Eurodollar Loans.

"**Eurodollar Loan**" shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

"**Event of Default**" shall have the meaning assigned to such term in Section 8.01.

"**Excess Cash Flow**" shall mean, for any Excess Cash Flow Period, Consolidated EBITDA for such Excess Cash Flow Period, minus, without duplication:

(a) interest expense, regularly scheduled payments and any other permanent repayments of Indebtedness paid in cash (other than (i) voluntary prepayments of Loans pursuant to Section 2.10(a) and (ii) prepayments with Excess Cash Flow proceeds) from sources other than the proceeds of long term Indebtedness (other than revolving Indebtedness to the extent intended to be repaid from operating cash flow) or Equity Issuances;

(b) Capital Expenditures made from sources other than the proceeds of long term Indebtedness (other than revolving Indebtedness to the extent intended to be repaid from operating cash flow) that are paid in cash;

(c) the aggregate amount of payments made in cash by Borrower and its Restricted Subsidiaries from sources other than the proceeds of Indebtedness (other than revolving Indebtedness to the extent intended to be repaid from operating cash flow) during such Excess Cash Flow Period (other than Capital Expenditures) and capitalized or otherwise not expensed in accordance with GAAP during such Excess Cash Flow Period;

(d) the aggregate amount of Consolidated Tax Expense paid in cash with respect to such Excess Cash Flow Period;

(e) the aggregate amount of consideration paid by Borrower and its Restricted Subsidiaries in cash during such Excess Cash Flow Period with respect to Permitted Acquisitions or other Investments made from sources other than the proceeds of Indebtedness (other than revolving Indebtedness to the extent intended to be repaid from operating cash flow) or Equity Issuances (including, without limitation, any purchase price adjustments (including working capital adjustments), deferred purchase consideration, Earn-Out payments (and payments of seller notes converted from Earn-Outs), holdback amounts and indemnity payments with respect thereto) but excluding intercompany Investments and Investments in cash or Cash Equivalents, to the extent paid in cash;

(f) the absolute value of, if negative, (x) the amount of Net Working Capital at the end of the prior Excess Cash Flow Period (or the beginning of the Excess Cash Flow Period in the case of the first Excess Cash Flow Period) minus (y) the amount of Net Working Capital at the end of such Excess Cash Flow Period;

(g) the aggregate amount of cash items added back to Consolidated EBITDA in the calculation of Consolidated EBITDA for such period to the extent paid in cash by Borrower and its Restricted Subsidiaries during such period;

(h) the aggregate amount added back to Consolidated EBITDA in the calculation of Consolidated EBITDA for such period pursuant to clauses (f) and (s) thereof;

(i) the aggregate amount of non-cash adjustments to Consolidated EBITDA for periods prior to the beginning of the current Excess Cash Flow Period to the extent paid in cash by Borrower and its Restricted Subsidiaries during such Excess Cash Flow Period;

(j) the aggregate amount of Dividends made in cash made from sources other than the proceeds of Indebtedness (other than revolving Indebtedness to the extent intended to be repaid from operating cash flow) or Equity Issuances permitted by Section 6.06 (other than clauses (e), (g), (h) and (i) of Section 6.06), during such Excess Cash Flow Period; and

(k) to the extent added to determine Consolidated EBITDA pursuant to clause (j) or (l) of the definition of Consolidated EBITDA, such amounts with respect to which no cash payment to Borrower or any of its Restricted Subsidiaries was received during such Excess Cash Flow Period;

provided that any amount deducted pursuant to any of the foregoing clauses that will be paid after the close of such Excess Cash Flow Period shall not be deducted again in a subsequent Excess Cash Flow Period; plus, without duplication:

(i) if positive, (x) the amount of Net Working Capital at the end of the prior Excess Cash Flow Period (or the beginning of the Excess Cash Flow Period in the case of the first Excess Cash Flow Period) minus (y) the amount of Net Working Capital at the end of such Excess Cash Flow Period;

(ii) cash items of income during such Excess Cash Flow Period not included in calculating Consolidated EBITDA;

(iii) any cash payment that was actually received by Borrower or any Restricted Subsidiary during such Excess Cash Flow Period with respect to which a deduction was taken pursuant to clause (k) above during the previous Excess Cash Flow Period; and

(iv) to the extent subtracted in determining Consolidated EBITDA, all items that did not result in a cash payment by Borrower or any of its Subsidiaries on a consolidated basis during such Excess Cash Flow Period; provided that any such cash payment subsequently made shall be excluded in the calculation of Excess Cash Flow for the subsequent period when made.

For purposes of calculating Excess Cash Flow for any Excess Cash Flow Period, for each Permitted Acquisition or other similar acquisition or other investment permitted hereunder consummated during such Excess Cash Flow Period, (x) the Consolidated EBITDA of a target of any such Permitted Acquisition or other similar acquisition or other investment shall be included in such calculation only from and after the first day of the first full fiscal quarter to commence following the date of the consummation of such Permitted Acquisition or other similar acquisition or other investment and (y) for the purposes of calculating Net Working Capital, the (A) total assets of a target of such Permitted Acquisition or other similar acquisition or other investment (other than cash and Cash Equivalents), as calculated as at the date of consummation of the applicable Permitted Acquisition or other similar acquisition or other investment, which may properly be classified as current assets on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (A), that such Permitted Acquisition or other similar acquisition or other investment has been consummated) and (B) the total liabilities of Borrower and its Restricted Subsidiaries, as calculated as at the date of consummation of the applicable Permitted Acquisition or other similar acquisition or other investment, which may properly be classified as current liabilities (other than the current portion of any long term liabilities and accrued interest thereon) on a consolidated balance sheet of Borrower and its Restricted Subsidiaries in accordance with GAAP (assuming, for the purpose of this clause (B), that such Permitted Acquisition or other similar acquisition or other investment has been consummated), shall, in the case of both immediately preceding clauses (A) and (B), be used in calculating the difference between the Net Working Capital at the end of the applicable Excess Cash Flow Period from the date of consummation of the Permitted Acquisition or other similar acquisition or other investment.

"**Excess Cash Flow Period**" shall mean each fiscal year of the Borrower, starting with the fiscal year ending December 31, 2022.

"**Excess Net Cash Proceeds**" shall have the meaning assigned to such term in Section 2.10(c)(i).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Affiliate**" shall have the meaning assigned to such term in Section 10.12.

"**Excluded Equity Interests**" shall mean Equity Interests (a) in excess of 65% of the Voting Stock issued by any first-tier CFC or CFC Holding Company (for the avoidance of doubt, none of the Equity Interests of any direct or indirect subsidiary of any CFC or CFC Holding Company), (b) in a joint venture which cannot be pledged without the consent of third parties, or the pledge of which is prohibited by the terms of, or would create a right of termination of one or more third parties under, any applicable Organizational Documents, joint venture agreement or shareholders' agreement after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code or other applicable law, (c) in any Immaterial Subsidiary, Unrestricted Subsidiary, not-for-profit Subsidiary or captive insurance entity, (d) with respect to which the cost, burden or consequence of obtaining a security interest therein exceeds the practical benefit to the Lenders afforded thereby, as mutually and reasonably determined by the Administrative Agent and the Borrower, (e) with respect to which a pledge therein is prohibited or restricted by applicable law (including any requirement to obtain the consent of any governmental authority or third party) or impossible or impracticable (as mutually and reasonably determined by the Administrative Agent and the Borrower) to obtain under applicable law and (f) with respect to which a pledge therein would reasonably be expected to result in material adverse tax consequences (including as a result of any law or regulation in any applicable jurisdiction similar to Section 956 of the Code) as reasonably determined by the Borrower in consultation with the Administrative Agent; *provided* that in each case set forth above, such equity will immediately cease to constitute Excluded Equity Interests when the relevant property ceases to meet this definition and, with respect to any such equity, a security interest under any applicable Security Document shall attach immediately and automatically without further action.

"**Excluded Foreign Subsidiary**" shall mean any direct or indirect Foreign Subsidiary of the Borrower.

"**Excluded Property**" shall have the meaning assigned to such term in the Security Agreement.

"**Excluded Subsidiary**" shall mean (a) any Restricted Subsidiary that is not a Wholly-Owned Subsidiary of the Borrower, (b) any Excluded Foreign Subsidiary, (c) any Immaterial Subsidiary, (d) any Unrestricted Subsidiary, (e) any not-for-profit Subsidiary, (f) any Excluded U.S. Subsidiary, (g) any captive insurance entity, (h) any special purpose entity, (i) any merger Subsidiary formed in connection with a Permitted Acquisition or other permitted Investment so long as such merger Subsidiary is merged out of existence pursuant to such Permitted Acquisition or other Investment or dissolved within one hundred twenty (120) days of its formation thereof or such later date as permitted by the Administrative Agent in its reasonable discretion, (j) any Subsidiary to the extent a Guarantee or other guarantee of the Obligations is prohibited or restricted by any contractual obligation as in existence on the Closing Date or at the time such Person becomes a Subsidiary (in each case, not entered into in contemplation hereof and for so long as such prohibition or restriction remains in effect) or by applicable Requirements of Law (including any requirement to obtain Governmental Authority or third party consent, license or authorization unless such consent, license or authorization has been obtained), (k) any Restricted Subsidiary acquired pursuant to a Permitted Acquisition or other Investment that has or guarantees assumed Indebtedness not incurred in contemplation of such Permitted Acquisition or other Investment and any Restricted Subsidiary thereof that guarantees such Indebtedness, in each case, to the extent (but only for so long as) such Indebtedness prohibits such Restricted Subsidiary from becoming a Guarantor, (l) any Subsidiary to the extent the Administrative Agent and the Borrower mutually and reasonably determine the cost or other consequences of providing such a Guarantee is excessive in relation to the value thereof to the Lenders, and (m) any Subsidiary to the extent the Borrower (in consultation with the Administrative Agent) reasonably determines that a Guarantee by such Subsidiary would reasonably be expected to result in a materially adverse tax consequence to a Credit Party; *provided* that the Borrower shall not be an Excluded Subsidiary.

"**Excluded Taxes**" shall mean, with respect to any Recipient of any payment to be made by or on account of any obligation of any Credit Party under any Loan Document, (a) Taxes imposed on or measured by such Recipient's net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (i) imposed as a result of the Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, any U.S. federal withholding Tax to the extent imposed on amounts payable to or for the account of a Recipient under a law, rule, regulation or treaty in effect at the time such Recipient becomes a party or acquires an interest hereto (or designates a new lending office), except (x) to the extent that such Recipient (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts or indemnity payments with respect to such withholding Tax pursuant to Section 2.15 or (y) if such Recipient is an assignee pursuant to a request by the Borrower under Section 2.16, (c) any Taxes attributable to such Recipient's failure to comply with Section 2.15(e), and (d) any withholding Tax imposed under FATCA.

"**Excluded U.S. Subsidiary**" shall mean (a) any direct or indirect Domestic Subsidiary of an Excluded Foreign Subsidiary or (b) any CFC Holding Company or any direct or indirect Subsidiary of a CFC Holding Company; *provided* that the Borrower shall not be an Excluded U.S. Subsidiary.

"**Executive Order**" shall have the meaning assigned to such term in Section 3.19.

"**Existing Lien**" shall have the meaning assigned to such term in Section 6.02(c).

"**Existing Loans**" shall have the meaning assigned to such term in Section 2.21(a).

"**Existing Tranche**" shall have the meaning assigned to such term in Section 2.21(a).

"**Extended Loans**" shall have the meaning assigned to such term in Section 2.21(a).

"**Extended Tranche**" shall have the meaning assigned to such term in Section 2.21(a).

"**Extending Lender**" shall have the meaning assigned to such term in Section 2.21(b).

"**Extension Amendment**" shall have the meaning assigned to such term in Section 2.21(c).

"**Extension Date**" shall have the meaning assigned to such term in Section 2.21(d).

"**Extension Election**" shall have the meaning assigned to such term in Section 2.21(b).

"**Extension Request**" shall have the meaning assigned to such term in Section 2.21(a).

"**FATCA**" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version thereof to the extent such version is substantively comparable and not materially more onerous to comply with), any current or future regulations or other official governmental interpretations thereof, any agreements entered into pursuant to current Section 1471(b)(1) of the Code (or any amended or successor version described above) and any intergovernmental agreements (together with any Laws implementing such agreements).

"**Federal Funds Rate**" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary to the next 1/100th of 1.00%) of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

"**Fee Letter**" shall mean that certain Closing Date Fee Letter, dated as of the Closing Date, by and among the Borrower and the Administrative Agent.

"**Financial Covenants**" shall mean, as of any date of determination, the covenants set forth Section 6.08 which are then in effect as of such date.

"**Financial Model**" shall mean the financial model and other financial information delivered by the Borrower to the Administrative Agent dated February 11, 2021.

"**Financial Officer**" of any person shall mean the chief financial officer, chief executive officer, vice president of finance, treasurer, assistant treasurer, controller, or, in each case, anyone acting in such capacity or any similar capacity.

"**First Lien Net Annual Recurring Revenue Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated First Lien Debt of the Borrower and its Restricted Subsidiaries on such date minus (ii) Unrestricted Cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries in an aggregate amount not to exceed $20,000,000 to (b) Annual Recurring Revenue of the Borrower and its Restricted Subsidiaries as of such date, in each case on a Pro Forma Basis (other than (a)(ii)).

"**Fixed Incremental Amount**" shall have the meaning assigned to such term in the definition of "Maximum Incremental Facilities Amount".

"**Flood Insurance Laws**" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"**Foreign Benefit Event**" shall mean, with respect to any Foreign Pension Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a Governmental Authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice by a Governmental Authority relating to the intention to terminate any such Foreign Pension Plan or to appoint a trustee or similar official to administer any such Foreign Pension Plan, or alleging the insolvency of any such Foreign Pension Plan, (d) the incurrence of any liability by any Group Member under applicable law on account of the complete or partial termination of such Foreign Pension Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and that could reasonably be expected to result in the incurrence of any liability by any Group Member, or the imposition on any Group Member of any fine, excise tax or penalty resulting from any noncompliance with any applicable law.

"**Foreign Casualty Event**" has the meaning specified in Section 2.10(h).

"**Foreign Disposition**" has the meaning specified in Section 2.10(h).

"**Foreign Lender**" shall mean any Recipient that is not a "United States person" as defined in Section 7701(a)(30) of the Code.

"**Foreign Pension Plan**" shall mean any defined benefit pension maintained or contributed to by (or required to be contributed to by) any Group Member with respect to employees employed outside the United States.

"**Foreign Plan**" shall mean any employee benefit plan, program, policy, arrangement or agreement sponsored, maintained or contributed to by (or required to be contributed to by) any Group Member with respect to employees employed outside the United States.

"**Foreign Subsidiary**" shall mean a Subsidiary that is organized under the laws of a jurisdiction other than the United States, any state thereof or the District of Columbia.

"**Fund**" shall mean any Person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" shall mean generally accepted accounting principles in the United States, applied on a consistent basis other than as expressly set forth herein.

"**Governmental Authority**" shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial, local or otherwise, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Group Members**" shall mean the Borrower and its Restricted Subsidiaries; and "**Group Member**" shall mean any one of them.

"**Guaranteed Obligations**" shall have the meaning assigned to such term in Section 7.01.

"**Guarantees**" shall mean the guarantees issued pursuant to Article VII by the Borrower and the Subsidiary Guarantors.

"**Guarantors**" shall mean each of the Subsidiary Guarantors.

"**Hazardous Materials**" shall mean the following: toxic or hazardous substances; hazardous wastes; polychlorinated biphenyls ("**PCBs**") or any substance or compound containing PCBs; friable asbestos or friable asbestos-containing materials; radon or any other radioactive materials including any source, special nuclear or by-product material; petroleum, crude oil or any fraction thereof; and any other pollutant or contaminant subject to regulation under any Environmental Laws due to their dangerous or deleterious properties or characteristics, or which can give rise to liability under any Environmental Laws due to their dangerous or deleterious properties or characteristics.

"**Hedging Agreement**" shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

"**Hedging Obligations**" shall mean obligations under or with respect to Hedging Agreements.

"**Historical Financial Statements**" shall mean (i) audited consolidated balance sheets and related statements of income and cash flows of Punchh Inc. and its Subsidiaries for the fiscal years ended December 31, 2017, December 31, 2018 and December 31, 2019 and (ii) management reviewed unaudited consolidated balance sheets and related statements of income and cash flows of Punchh Inc. and its Subsidiaries for the period ended December 31, 2020.

"**Immaterial Subsidiary**" shall mean any Restricted Subsidiary of the Borrower that the Borrower designates in writing (including via email) to the Administrative Agent as an "Immaterial Subsidiary"; *provided* that, as of the date of the last financial statements delivered or required to be delivered on or prior to the date of such designation pursuant to Section 5.01(a) or (b), (a) the Consolidated Total Assets attributable to all such Subsidiaries shall not be in excess of 5.0% of Consolidated Total Assets as of such date, (b) the Annual Recurring Revenue attributable to all such Subsidiaries shall not be in excess of 5.0% of total Annual Recurring Revenue of the Group Members on a consolidated basis as of such date, and (c) any such Restricted Subsidiary shall not own or license any Intellectual Property that is material to the business of the Borrower and its Restricted Subsidiaries; *provided*, *further*, that in each case, the Borrower may designate and re-designate a Subsidiary as an Immaterial Subsidiary at any time, subject to the limitations and requirements set forth in this definition. If the Consolidated Total Assets or total revenues of all Restricted Subsidiaries so designated by the Borrower as "Immaterial Subsidiaries" shall at any time exceed the limits set forth in the preceding sentence, then starting with the largest Restricted Subsidiary (or in such other order as the Borrower may elect in its sole discretion), the number of Restricted Subsidiaries that are at such time designated as Immaterial Subsidiaries shall automatically be deemed to no longer be designated as Immaterial Subsidiaries until the threshold amounts in the preceding sentence are no longer exceeded (as reasonably determined by the Borrower), with any Immaterial Subsidiaries at such time that are below such threshold amounts still being designated as (and remaining as) Immaterial Subsidiaries.

"**Impacted Loans**" shall have the meaning assigned to such term in Section 2.11(c).

"**Increase Effective Date**" shall have the meaning assigned to such term in Section 2.20(a).

"**Incremental Amendment**" shall mean an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Incremental Lender that agrees to provide any portion of the Incremental Facilities being incurred pursuant thereto.

"**Incremental Facilities**" shall have the meaning assigned to such term in Section 2.20(a).

"**Incremental Lender**" shall mean a Lender with an Incremental Loan Commitment or an outstanding Incremental Loan.

"**Incremental Loan Commitment**" shall have the meaning assigned to such term in Section 2.20(a).

"**Incremental Loans**" shall have the meaning assigned to such term in Section 2.20(c)(i).

"**Incurrence Ratio**" shall have the meaning assigned to such term in the definition of "Maximum Incremental Facilities Amount".

"**Indebtedness**" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (d) all obligations of such person issued or assumed as the deferred purchase price of property or services; (e) all Indebtedness of others (excluding prepaid interest thereon) secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed by such person, but limited to, to the extent that such Indebtedness is recourse only to such property (and not to such person), the lower of (x) fair market value of such property as determined by such person in good faith and (y) the amount of Indebtedness secured by such Lien; (f) all Capital Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such person to the extent classified as indebtedness under GAAP (for the avoidance of doubt, lease payments under any operating leases (other than Capital Leases recorded as capitalized leases in accordance with GAAP as in effect on December 31, 2018) shall not constitute Indebtedness); (g) all Hedging Obligations to the extent required to be reflected as a liability on the balance sheet (excluding the footnotes thereto) of such person prepared in accordance with GAAP, (h) all Attributable Indebtedness of such person; (i) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; (j) all obligations of such person, whether or not contingent, in respect of Disqualified Capital Stock of such person, valued at, in the case of redeemable preferred capital stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such capital stock plus accrued and unpaid dividends; and (k) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (j) above. The Indebtedness of any person shall include the Indebtedness of any other entity (including any partnership in which such person is a general partner) to the extent such person is liable therefor as a result of such person's ownership interest in or other relationship with such entity, except (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such person is not liable therefor. Notwithstanding the foregoing or anything else herein to the contrary, Indebtedness shall not include: (a) trade accounts payable, (b) accrued obligations incurred in the ordinary course of business, (c) purchase price adjustments and Earn-Out obligations (until such obligations or adjustments become a liability on the balance sheet of such Person in accordance with GAAP and solely if not paid after becoming due and payable), (d) royalty payments made in the ordinary course of business in respect of licenses (to the extent such licenses are permitted hereby), (e) any accruals for payroll and other non-interest bearing liabilities accrued in the ordinary course of business, including tax accruals, (f) deferred rent obligations, taxes and compensation, (g) customary payables with respect to money orders or wire transfers, (h) customary obligations under employment arrangements, (i) operating leases (including for the avoidance of doubt any lease, concession or license treated as an operating lease under GAAP), (j) obligations in respect of any license, permit or other approval arising in the ordinary course of business, and (k) any obligations attributable to the exercise of appraisal rights and the settlement or resolution of any claims or actions (whether actual, contingent or potential) with respect thereto.

"**Indemnified Taxes**" shall mean (a) all Taxes imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document other than Excluded Taxes and (b) to the extent not described in (a), Other Taxes.

"**Indemnitee**" shall have the meaning assigned to such term in Section 10.03(b).

"**Information**" shall have the meaning assigned to such term in Section 10.12.

"**Intellectual Property**" shall have the meaning assigned to such term in the Security Agreement.

"**Intellectual Property Rights**" shall mean any intellectual property rights and other proprietary rights recognized in any jurisdiction in the world associated with (a) patents and patent applications (and any patents that issue as a result of those patent applications), including such rights in invention disclosures, (b) copyrights, copyright registrations and copyright applications, "moral" rights and mask work rights, including such rights in original works of authorship in any medium of expression, whether or not published, (c) the protection of knowhow, trade and industrial secrets and proprietary and confidential information, (d) other proprietary rights related to Technology, (e) logos, trademarks, trade names, service marks, including such rights in business names, brand names, certification marks, trade dress, slogans, Domain Names, and any other protected indicia of commercial source or origin, and any goodwill associated with the foregoing, (f) analogous rights to those set forth above, (g) divisions, continuations, continuations in part and counterparts claiming priority therefrom, renewals, reissuances, provisionals and extensions of the foregoing (as applicable), and (i) claims, causes of action, rights to sue for past, present and future infringement or unconsented use of any of the foregoing.

"**Intercreditor Agreement**" shall mean any intercreditor agreement executed in connection with any transaction requiring such agreement to be executed pursuant to the terms hereof, or otherwise required to be executed pursuant to the terms hereof, among the Administrative Agent, the Collateral Agent and one or more other Senior Representatives of Indebtedness, or any other party, as the case may be, and acknowledged and agreed to by the Borrower and the Guarantors, in each case, on terms that are reasonably satisfactory to the Administrative Agent, in each case, as amended, restated, amended and restated, supplemented, renewed, replaced, refinanced or otherwise modified from time to time with the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed).

"**Interest Election Request**" shall mean a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit D or such other form (including any form on an electronic platform or electronic transmission system) as may be approved by the Administrative Agent, appropriately completed and signed by a Responsible Officer of each Borrower.

"**Interest Payment Date**" shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December to occur during any period in which such Loan is outstanding, (b) with respect to any Eurodollar Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Loan with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) the Maturity Date.

"**Interest Period**" shall mean, with respect to any Eurodollar Loan, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, if agreed to by all relevant Lenders, twelve months or any shorter period) thereafter, as the Borrower may elect; *provided* that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the nearest preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period and (c) no Interest Period shall extend beyond, in the case of any Eurodollar Loan, the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"**Investments**" shall have the meaning assigned to such term in Section 6.03.

"**Joinder Agreement**" shall mean a joinder agreement substantially in the form of Exhibit E, with such amendments as may be reasonably and mutually agreed between the Administrative Agent and the Borrower.

"**Junior Secured Indebtedness**" shall mean senior Indebtedness of the Credit Parties for borrowed money that is secured on a junior basis to the Secured Obligations, subject to an Intercreditor Agreement.

"**Latest Maturity Date**" as of any date of determination, shall mean the latest maturity or expiration date applicable to any Loan hereunder at such time, including the latest maturity or expiration date of any Incremental Loan or any Refinancing Loan, in each case, that is governed by the terms of this Agreement.

"**LCA Election**" shall mean the Borrower's election to test the permissibility of a Limited Condition Acquisition in accordance with the methodology set forth in Section 1.06 by delivering written notice thereof to the Administrative Agent on or after the date that the definitive agreement for such Limited Condition Acquisition is entered into (but prior to the consummation thereof).

"**LCA Test Date**" shall have the meaning given to that term in Section 1.06.

"**Lead Arranger**" shall mean Owl Rock Capital Advisors LLC.

"**Leases**" shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

"**Lender**" shall mean a Lender with a Commitment or an outstanding Loan.

"**LIBO Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum equal to the London Interbank Offered Rate, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; provided, that in the event the screen page displaying such LIBO Rate is unavailable, the LIBO Rate shall be the rate per annum (rounded to the nearest 1/100 of 1.00%) equal to the offered quotation rate to three (3) major financial institutions reasonably satisfactory to the Administrative Agent in the London interbank market for deposits (for delivery on the first day of the relevant Interest Period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loans, for which the LIBO Rate is then being determined with maturities comparable to such Interest Period as of approximately 11:00 a.m. London time, two Business Days prior to the commencement of such Interest Period.

"**Lien**" shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment for security, hypothecation, security interest or encumbrance of any kind or any arrangement to provide priority or preference, including any easement, right-of-way or other encumbrance on title to owned Real Property, in each of the foregoing cases whether voluntary or imposed by law; (b) the interest of a vendor or a lessor under any conditional sale agreement, Capital Lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; *provided* that in no event shall an operating lease be deemed to be a Lien; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Limited Condition Acquisition**" shall mean any Permitted Acquisition or other Investment permitted hereunder whose consummation is not conditioned on the availability of, or on obtaining, third party financing and which is not a simultaneous sign and close transaction; provided that, in the event the consummation of any such Permitted Acquisition or other permitted Investment shall not have occurred on or prior to the date that is ninety (90) days following the signing of the applicable acquisition agreement, such Permitted Acquisition or permitted Investment shall no longer constitute a Limited Condition Acquisition for any purpose (unless otherwise agreed to by the Administrative Agent in its reasonable discretion).

"**Liquidity**" shall mean, as of any date of determination, the amount of Unrestricted Cash of the Borrower and its Restricted Subsidiaries as of such date.

"**Loan**" shall mean a Loan made by Lenders to the Borrower pursuant to Section 2.01, and shall include, unless the context shall otherwise require, any Incremental Loans made pursuant to Section 2.20 after the Closing Date.

"**Loan Documents**" shall mean this Agreement, any amendments hereto, any Intercreditor Agreement, the Notes (if any), the Security Documents, the Fee Letter (other than for purposes of Section 10.02) and intercreditor agreements and subordination agreements entered into pursuant to the terms hereof that any Credit Party is party to and any other document designated as such by the Borrower and the Administrative Agent, in each case as amended, amended and restated, restated, supplemented and/or modified from time to time.

"**Margin Stock**" shall have the meaning assigned to such term in Regulation U.

"**Material Acquisition**" shall have the meaning assigned to such term in the definition of "Permitted Acquisition".

"**Material Adverse Effect**" shall mean a material adverse effect on (a) the business or financial condition or results of operations of the Borrower and its Restricted Subsidiaries, taken as a whole, (b) the material rights and remedies (taken as a whole) of the Administrative Agent, the Collateral Agent or the Lenders under the Loan Documents (other than due to the action or inaction of the Administrative Agent, the Collateral Agent, the applicable Lenders or any other Secured Party) or (c) the ability of the Borrower and the Guarantors, taken as a whole, to perform their payment obligations under the Loan Documents. Notwithstanding the foregoing, for purposes of any representations and warranties in the Loan Documents with respect to the Borrower and any of its Subsidiaries to be made on the Closing Date, "Material Adverse Effect" shall mean Material Adverse Effect (as defined in the Closing Date Acquisition Agreement).

"**Material Property**" shall mean all Real Property owned in fee in the United States by any Credit Party, in each case, with a fair market value of $7,500,000 (or $10,000,000 in the aggregate for all such Real Property) or more, as determined (i) with respect to any Real Property owned by any Credit Party on the Closing Date, as of the Closing Date, and (ii) with respect to any Real Property acquired by a Credit Party after the Closing Date, as of the date of such acquisition; *provided* that, "Material Property" shall not include any portion of Real Property owned in fee that contains improvements located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a "special flood hazard area".

"**Maturity Date**" shall mean (x) with respect to any Loans the maturity date of which has not been extended pursuant to Section 2.21, April 8, 2025 or, if such date is not a Business Day, the first Business Day preceding such date, and (y) with respect to any Extended Tranche of Loans, the final maturity date specified in the applicable Extension Election accepted by the respective Lender or Lenders.

"**Maximum Incremental Facilities Amount**" shall mean:

(i) (A) an aggregate amount equal to $25,000,000, *plus* (B) the amount of any voluntary prepayments of any Loans and any Incremental Facility (it being understood that any such voluntary prepayment financed with the proceeds of Credit Agreement Refinancing Indebtedness shall not increase the calculation of the amount under this clause (i)(B)), *plus* (C) payments required by Sections 2.16(b)(B) or 10.02(e)(i), in each case to the extent financed with sources other than the proceeds of long-term Indebtedness (other than revolving Indebtedness) of the Borrower or its Restricted Subsidiaries (the "**Fixed Incremental Amount**"); *provided* that, at the Borrower's option, capacity under clause (i)(B) of the Fixed Incremental Amount shall be deemed to be used prior to the capacity under clause (i)(A) of the Fixed Incremental Amount), *plus*

(ii) an unlimited amount so long as, on a Pro Forma Basis as of the applicable date of determination and for the applicable Test Period, determined after giving effect to the incurrence of any such Incremental Facility and any Permitted Acquisition or other permitted Investment consummated in connection therewith, any Indebtedness repaid with the proceeds thereof and any Investment, disposition or debt incurrence in connection therewith and all other pro forma adjustments (but excluding the proceeds of such Incremental Facility in any cash or cash equivalents formulation), the First Lien Net Annual Recurring Revenue Leverage Ratio shall not exceed 2.10 to 1.00 (the "**Incurrence Ratio**"); *provided* that (w) the Incurrence Ratio, as so calculated, shall be permitted, to exceed the applicable level set forth above to the extent of any Incremental Facilities incurred in reliance on the Fixed Incremental Amount concurrently with the incurrence of any Incremental Facility pursuant to this clause (ii); (x) for purposes of determining compliance with the foregoing Incurrence Ratio in this clause (ii), any use of such Incremental Facilities to prepay Consolidated First Lien Debt shall be given pro forma effect and (y) to the extent the proceeds of any Incremental Facility are intended to be applied to finance a Limited Condition Acquisition, if the Borrower has made an LCA Election with respect to such Limited Condition Acquisition, Consolidated First Lien Debt and Annual Recurring Revenue, as applicable, for purposes of determining compliance with the Incurrence Ratio, shall be determined instead, on a Pro Forma Basis, only (i) in the case of Consolidated First Lien Debt, as of the date, and (ii) with respect to Annual Recurring Revenue, for the Test Period most recently ended prior to the date, in each case on which the relevant agreement with respect to such Limited Condition Acquisition is entered into as if the Limited Condition Acquisition had occurred on such date. For the avoidance of doubt, any amounts incurred in reliance on the Fixed Incremental Amount as an Incremental Facility shall thereafter reduce the amount of Incremental Facilities that may be incurred in reliance thereon. For the avoidance of doubt, (I) the Borrower may elect to use this clause (ii) regardless of whether the Borrower has capacity under the Fixed Incremental Amount, (II) the Borrower may elect to use this clause (ii) prior to using the Fixed Incremental Amount, and if both clause (ii) and the Fixed Incremental Amount are available and the Borrower does not make an election, then the Borrower will be deemed to have elected to use this clause (ii) prior to using any amount available under the Fixed Incremental Amount and (III) loans may be incurred under clauses (i) and (ii) above, and proceeds from any such incurrence under clauses (i) and (ii) above, may be utilized in a single transaction or series of related transactions by, at the Borrower's option, first calculating the incurrence under clause (ii) above (without inclusion of any amounts to be utilized pursuant to clause (i)) and then calculating the incurrence under clause (i)(B) above (without inclusion of any amounts to be utilized pursuant to clause (i)(A)), as applicable; *provided* that solely for the purpose of calculating the Total Net Annual Recurring Revenue Leverage Ratio to determine the availability under any Incremental Facility at the time of incurrence, any cash proceeds from an Incremental Facility being incurred at such test date in calculating such Total Net Annual Recurring Revenue Leverage Ratio shall be excluded.

"**Maximum Rate**" shall have the meaning assigned to such term in Section 10.14.

"**Minimum Borrowing Amount**" shall mean

(a) in the case of Eurodollar Loans, $250,000; and

(b) in the case of ABR Loans, $250,000.

"**MNPI**" shall have the meaning assigned to such term in Section 10.01(f)(i).

"**Moody's**" shall mean Moody's Investors Service Inc.

"**Mortgage**" shall have the meaning assigned to such term in Section 5.10(c)(ii).

"**Multiemployer Plan**" shall mean a "multiemployer plan" within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA which is subject to Title IV of ERISA (a) to which any Group Member is then making or accruing an obligation to make contributions or (b) with respect to which any Group Member has any liability (including on account of an ERISA Affiliate).

"**Net Cash Proceeds**" shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the proceeds thereof in the form of cash, cash equivalents (including Cash Equivalents) and marketable securities (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable, or by the sale, transfer or other disposition of any non-cash consideration received in connection therewith or otherwise, but only as and when received) received by any Group Member, net of, without duplication, (i) fees and expenses (including brokers' fees or commissions, discounts, legal, accounting and other professional and transactional fees, transfer and similar Taxes and the Borrower's good faith estimate of Taxes paid or payable in connection with such sale or with the repatriation of such proceeds (after taking into account any available tax credits or deductions and any payments or payable amounts under tax sharing arrangements permitted under the Loan Documents) (*provided* that, to the extent and at the time that any such Taxes are no longer required to be paid or payable, such amounts then constitute Net Cash Proceeds)), (ii) amounts required to repay or return customer deposits required to be repaid or returned upon such Asset Sale, (iii) amounts reasonably required to be provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations, earn-out obligations or purchase price adjustments associated with such Asset Sale or (y) any other liabilities retained or payable by any Group Member associated with the Properties sold in such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money (other than the Loans) that is secured by a Lien on the Properties sold in such Asset Sale (so long as such Lien was permitted to encumber such Properties under the Loan Documents at the time of such sale and was not a *pari passu* or junior Lien on Collateral) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such Properties);

(b) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received by, or on behalf of, any Group Member in respect thereof, net of all costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event (including, in respect of any such Casualty Event, transfer and similar Taxes and the Borrower's good faith estimate of Taxes paid or payable in connection with such Casualty Event or with the repatriation of such proceeds (after taking into account any available tax credits or deductions and any payments or payable amounts under tax sharing arrangements permitted under the Loan Documents) (*provided* that, to the extent and at the time that any such Taxes are no longer required to be paid or payable, such amounts shall then constitute Net Cash Proceeds));

(c) with respect to any issuance or sale of Equity Interests by the Borrower or any of its Restricted Subsidiaries, the cash proceeds thereof, net of Taxes (including Taxes payable upon the repatriation of any such proceeds to a Group Member after taking into account any available tax credits or deductions), fees, commissions, costs and other expenses incurred in connection therewith; and

(d) with respect to any Debt Issuance by the Borrower or any of its Restricted Subsidiaries, the cash proceeds thereof, net of Taxes (including Taxes payable upon repatriation of the proceeds to a Group Member after taking into account any available tax credits or deductions), fees, commissions, costs and other expenses incurred in connection therewith.

"**Net Working Capital**" shall mean, at any time, Consolidated Current Assets at such time minus Consolidated Current Liabilities at such time.

"**Non-Consenting Lender**" shall mean any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.02 and (ii) has been approved by the Required Lenders or more than 50% of the affected Lenders, as applicable.

"**Non-Extending Lender**" shall have the meaning assigned to such term in Section 2.21(e).

"**Not Otherwise Applied**" shall mean, with reference to any amount of proceeds of any transaction or event, that such amount (a) was not required to be applied to prepay the Loans pursuant to Section 2.10, (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was contingent on receipt of such amount or utilization of such amount for a specified purpose, (c) in the case of Net Cash Proceeds from Equity Cure contributions, was not otherwise included as an Equity Cure Contribution in the calculation of the Total Net Annual Recurring Revenue Leverage Ratio for purposes of determining compliance with the Financial Covenants, (d) [reserved], and (e) was not previously applied to finance, fund or otherwise constitute all or a portion of the purchase price of a "Permitted Acquisition".

"**Notes**" shall mean any notes evidencing the Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibit F.

"**Notice of Intent to Cure**" shall have the meaning assigned to such term in Section 8.03(a).

"**Obligations**" shall mean obligations of the Borrower and the other Credit Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium (including the Applicable Prepayment Premium), if any, and interest (including any interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including fees and other monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower and the other Credit Parties under this Agreement and the other Loan Documents.

"**OFAC**" shall mean the U.S. Department of the Treasury, Office of Foreign Assets Control.

"**Organizational Documents**" shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of limited partnership and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

"**Other Connection Taxes**" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced by any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"**Other Taxes**" shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made hereunder or under any other Loan Document or from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Document, except for any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16).

"**Owl Rock**" shall have the meaning assigned to such term in the preamble.

"**Paid in Full**", "**Pay in Full**" or "**Payment in Full**" shall mean, with respect to any Obligations, Secured Obligations or Guaranteed Obligations, as applicable, the payment in full in cash of all such Obligations, Secured Obligations or Guaranteed Obligations, as applicable (other than contingent indemnification obligations or unasserted expense reimbursement obligations.

"**Participant**" shall have the meaning assigned to such term in Section 10.04(d)(i).

"**Participant Register**" shall have the meaning assigned to such term in Section 10.04(d)(iii).

"**Patriot Act**" shall have the meaning assigned to such term in Section 3.19.

"**Payment Block**" shall mean any of the circumstances described in Section 2.10(h).

"**PBGC**" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Permitted Acquisition**" shall mean any transaction or series of related transactions by the Borrower or any of its Restricted Subsidiaries for (a) the direct or indirect acquisition of all or substantially all of the property of any Person, or of any assets constituting an entire line of business, business unit, division or product line (including research and development and related assets in respect of any product) of any Person; (b) the acquisition (including by merger or consolidation) of the Equity Interests (other than director qualifying shares) of any Person that becomes a Restricted Subsidiary after giving effect to such transaction; or (c) a merger or consolidation or any other combination with any Person (so long as a Credit Party (including for the avoidance of doubt (except in the case of a merger, consolidation or other combination involving the Borrower) any such Person that becomes a Credit Party upon the consummation of such merger, consolidation or other combination), to the extent such Credit Party is a party to such merger, consolidation or other combination, is the surviving entity); *provided* that each of the following conditions shall be met or waived by the Required Lenders:

(i) no Event of Default shall have occurred and be continuing immediately before giving pro forma effect to such acquisition and immediately after giving effect to such acquisition (or in the case of a Limited Condition Acquisition, subject to Section 1.06, no Event of Default under Section 8.01(a), (b), (g) or (h) shall have occurred and be continuing immediately before giving pro forma effect to such acquisition and immediately after giving effect to such acquisition);

(ii) subject to Section 1.06, immediately before and after giving effect to such transaction on a Pro Forma Basis (assuming that such transaction and all other Permitted Acquisitions consummated since the first day of the relevant Test Period ending on or prior to the date of such transaction had occurred on the first day of such relevant Test Period), the Borrower shall be in compliance with the Financial Covenants; provided that, such Pro Forma Basis calculation shall give effect to the sale of any assets (including the exclusion of any historical performance thereof) to be sold substantially concurrently with such Permitted Acquisition pursuant to Section 6.05(f) but, for the avoidance of doubt, such Pro Forma Basis calculation shall give effect to any cash received by the Company and its Restricted Subsidiaries in connection with the sale of such assets;

(iii) immediately after giving effect to such transaction, the Borrower and its Restricted Subsidiaries shall be in compliance with Section 6.11;

(iv) any such newly created or acquired Restricted Subsidiary or property shall either (x) to the extent required by Section 5.10 or Section 5.11, as applicable, become a Credit Party and comply with the requirements of Section 5.10 or become part of the "Collateral" and be subject to the requirements of Section 5.11, or (y) if any such newly created or acquired Restricted Subsidiary does not become a Credit Party and comply with the requirements of Section 5.10 or such assets do not become part of the "Collateral", Total Consideration paid in connection with such purchase or acquisition and all other such purchases or acquisitions described in this clause (y) shall not exceed $17,500,000 in the aggregate;

(v) with respect to any Permitted Acquisition with a total consideration in excess of $25,000,000 (any such Permitted Acquisition, a "**Material Acquisition**"), such acquisition shall not be consummated pursuant to a tender offer that is not supported by the board of directors of the Person to be acquired and the board of directors of any such Person shall not have indicated publicly its opposition to the consummation of such acquisition (which opposition has not been publicly withdrawn);

(vi) with respect to any Material Acquisition, receipt by Administrative Agent of drafts of the material acquisition documents at least five (5) days prior to the closing of such acquisition or such shorter period as Administrative Agent may reasonably accept (with executed copies thereof provided to Administrative Agent as soon as available), and with respect to any Permitted Acquisition that is not a Material Acquisition, executed copies of the material acquisition documents promptly following the date that they are made available to the Borrower;

(vii) with respect to any Material Acquisition, delivery to Administrative Agent at least five (5) days prior to the closing of such acquisition or such shorter period as Administrative Agent may reasonably accept of, solely to the extent readily available, (i) a description of the proposed acquisition and material and customary legal and business diligence reports (on a non-reliance basis), (ii) summary historical annual audited and quarterly unaudited financial statements (including a balance sheet, income statement and cash flows statement) of the target for the previous twelve (12) month period, (iii) pro forma forecasted balance sheets, income statements, and cash flow statements of the Borrower and its Subsidiaries, all prepared on a basis consistent with the Borrower's historical financial statements, subject to adjustments to reflect projected consolidated operations following the acquisition, together with appropriate supporting details and a statement of underlying assumptions for the one year period following the date of the proposed acquisition, on a month by month basis, and (iv) a quality of earnings report from a firm of regionally recognized standing or otherwise reasonably acceptable to Administrative Agent; provided that, with respect to any Permitted Acquisition that is not a Material Acquisition, to the extent any of the items set forth in (i) – (iv) of this clause (vii) are available, the Borrower shall provide (or cause to be provided) such items promptly following the date that they are made available to the Borrower; and

(viii) with respect to any Material Acquisition, the Borrower shall have delivered to Administrative Agent, on or prior to the date of the consummation of each Permitted Acquisition, a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to Administrative Agent, certifying that all the requirements in clauses (i), (ii), (iii) and (v) above have been met or will be satisfied on or prior to the consummation of such acquisition.

Notwithstanding anything to the contrary contained in the immediately preceding sentence, an acquisition which does not otherwise meet the requirements set forth above in the definition of "**Permitted Acquisition**" shall constitute a Permitted Acquisition if, and to the extent, the Required Lenders agree in writing, prior to the consummation thereof, that such acquisition shall constitute a Permitted Acquisition for purposes of this Agreement.

"**Permitted Liens**" shall have the meaning assigned to such term in Section 6.02.

"**Permitted Pari Passu Refinancing Debt**" shall mean any secured Indebtedness incurred by the Borrower or any other Credit Party and guarantees with respect thereto by any Credit Party; *provided* that (i) such Indebtedness is secured by the Collateral on a *pari passu* basis (but without regard to the control of remedies) with the Secured Obligations and is not secured by any property or assets of the Borrower or its Restricted Subsidiaries other than the Collateral, (ii) such Indebtedness constitutes Credit Agreement Refinancing Indebtedness in respect of Loans, Incremental Loans or Refinancing Loans, and (iii) a Senior Representative validly acting on behalf of the holders of such Indebtedness shall have become party to an Intercreditor Agreement.

"**Permitted Refinancing**" shall mean, with respect to any Person, any modification, refinancing, refunding, renewal, replacement or extension of any Indebtedness of such Person; *provided* that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed, replaced or extended except by an amount equal to unpaid accrued interest and premium thereon *plus* other reasonable amounts paid, and fees, expenses, commissions, underwriting discounts and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement or extension and by an amount equal to any existing commitments unutilized thereunder, (b) other than with respect to a Permitted Refinancing of Indebtedness permitted pursuant to Section 6.01(e), such modification, refinancing, refunding, renewal, replacement or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (c) other than with respect to a Permitted Refinancing of Indebtedness permitted pursuant to Section 6.01(d) or (e), at the time thereof, no Event of Default shall have occurred and be continuing, (d) to the extent such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement or extension is subordinated in right of payment to the Obligations on terms, taken as a whole, at least as favorable (as reasonably determined by the Borrower and the Administrative Agent) to the Lenders in all material respects as those contained in the documentation governing the subordination of the Indebtedness being modified, refinanced, refunded, renewed, replaced or extended, (e) if any Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is unsecured, such modified, refinanced, refunded, renewed, replaced or extended Indebtedness shall also be unsecured, and if such Indebtedness being modified, refinanced, refunded, renewed, replaced or extended is secured on a junior basis to the Loans, such modified, refinanced, refunded, renewed, replaced or extended Indebtedness shall also be secured on a junior basis to the Loans, and (f) neither the Borrower nor any of its Restricted Subsidiaries shall be an obligor or guarantor of any such refinancings, replacements, refundings, renewals, replacements or extensions except to the extent that such Person was such an obligor or guarantor in respect of the applicable Indebtedness being modified, refinanced, refunded, renewed, replaced or extended.

"**Permitted Unsecured Refinancing Debt**" shall mean unsecured Indebtedness incurred by the Borrower or any other Credit Party and guarantees with respect thereto by any Credit Party; *provided* that such Indebtedness constitutes Credit Agreement Refinancing Indebtedness in respect of Loans, Incremental Loans or Refinancing Loans.

"**Person**" or "**person**" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Plan**" shall mean any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 or Section 430 of the Code or Section 302 or Section 303 of ERISA which is maintained or contributed to by (or required to be contributed to by) any Group Member or with respect to which any Group Member has any liability (including on account of an ERISA Affiliate).

"**Platform**" shall have the meaning assigned to such term in Section 10.01(e).

"**Privacy, Data Security and Consumer Protection Laws**" shall mean all applicable Laws, regulations, and legally binding guidelines concerning the collection, receiving, processing, handling, disposal, privacy, protection, accessing, using, disclosing, electronically transmitting, securing, sharing, transferring and storing of Protected Information.

"**Private Side Communications**" shall have the meaning assigned to such term in Section 10.01(f).

"**Private Siders**" shall have the meaning assigned to such term in Section 10.01(f).

"**Pro Forma Balance Sheet**" shall have the meaning assigned to such term in Section 3.04(a).

"**Pro Forma Basis**" shall mean, with respect to the calculation of all financial ratios and tests (including the First Lien Net Annual Recurring Revenue Leverage Ratio and the amount of Consolidated Total Assets and Annual Recurring Revenue) contained in this Agreement (other than for purposes of calculating Excess Cash Flow), in each case as of any date, that such calculation shall give pro forma effect to the Transactions and all Subject Transactions (and the application of the proceeds from any such asset sale or debt incurrence) that have occurred during the relevant testing period for which such financial test or ratio is being calculated and/or during the period immediately following such period and prior to or substantially concurrently with the events for which the calculation of any such ratio or test is made (including such event itself), including pro forma adjustments arising out of events which are attributable to the Transactions, the proposed Subject Transaction and/or all other Subject Transactions that have been consummated during the relevant period, in each case as certified on behalf of the Borrower by a Financial Officer of the Borrower, using, for purposes of determining such compliance with a financial test or ratio (including any incurrence test), the historical financial statements of all entities, divisions or lines or assets so acquired or sold and the consolidated financial statements of the Borrower and/or any of its Restricted Subsidiaries, calculated as if the Transactions or such Subject Transaction (including the Subject Transaction(s) for which the calculation of any such ratio or test is made and any other substantially concurrent Subject Transaction(s)), and/or all other Subject Transactions that have been consummated during the relevant period, and any Indebtedness repaid in connection therewith, had been consummated (and the change in Consolidated EBITDA resulting therefrom) and incurred or repaid at the beginning of such period and Consolidated Total Assets shall be calculated after giving effect thereto. Pro Forma Basis calculations shall give effect to the sale of any assets (including the exclusion of any historical performance thereof) to be sold substantially concurrently with the consummation of a Permitted Acquisition pursuant to Section 6.05(f), but, for the avoidance of the doubt, such Pro Forma Basis calculations shall give effect to any cash received by the Company and its Restricted Subsidiaries in connection with the sale of such assets.

Whenever pro forma effect is to be given to the Transactions or a Subject Transaction, the pro forma calculations shall be made in a manner consistent with the definition of "Consolidated EBITDA" in good faith by a Financial Officer of the Borrower (as set forth in a certificate of such Financial Officer delivered to the Administrative Agent) (including adjustments for the Transactions, the proposed Subject Transaction and all other Subject Transactions that have been consummated during the relevant period with respect to "run rate" cost savings, operating expense reductions, other operating improvements and initiatives and synergies that are reasonably anticipated by the Borrower (as reasonably determined by the Borrower in good faith and certified by a Financial Officer of the Borrower) to be realized after any acquisition (including the commencement of activities constituting a business) or disposition (including the termination or discontinuance of activities constituting a business), in each case of business entities or of properties or assets constituting a division or line of business (including, without limitation, a product line), and/or any other operational change (including, to the extent applicable, in connection with the Transactions or any restructuring) within 12 months after such period, in each case, whether such action has been taken or is reasonably expected to be taken (which will be added to Consolidated EBITDA as so projected until fully realized and calculated on a Pro Forma Basis as though such synergies, cost savings, operating expense reductions, other operating improvements and initiatives had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; provided that (i) for the avoidance of doubt, with respect to operational changes that are not associated with any acquisition or disposition, the "run rate" cost savings, operating expense reductions, other operating improvements and initiatives and synergies associated with such operational change shall be limited to those that are reasonably anticipated by the Borrower to be realized after the date on which such operational change is planned or otherwise identified by the Borrower in good faith within 12 months after such period, (ii) to the extent that such cost savings, operating expense reductions, other operating improvements and initiatives and synergies are no longer anticipated by the Borrower to be realized following the relevant acquisition, disposition or operational change or, in the case of operational changes that are not associated with an acquisition or disposition, after the date on which such operational change is planned or otherwise identified by the Borrower in good faith, in each case, within 12 months after such period, such amounts shall no longer be added back to Consolidated EBITDA, and (iii) amounts added back to Consolidated EBITDA pursuant to this paragraph of the definition of "Pro Forma Basis" (taken together with (i) cash Charges added back to Consolidated EBITDA pursuant to clause (m) and clause (n) and (ii) addbacks pursuant to clause (f)(y) of Consolidated EBITDA) shall not, in the aggregate, exceed 25% of Consolidated EBITDA for any four fiscal quarter period (determined prior to giving effect thereto).

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the applicable date of determination for which the calculation is made had been the applicable rate for the entire test period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capital Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate as the Borrower may designate.

"**Projections**" shall have the meaning assigned to such term in Section 3.13(a).

"**Property**" or "**property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

"**Protected Information**" shall mean, any information that: (i) identifies (or in combination with other information may identify), relates to, describes, is capable of being associated with, or can be reasonably linked, directly or indirectly, to a natural person, including an individual's name, address, telephone number, e-mail address, date of birth, photograph, social security number or tax identification number, credit card number, bank account number, biometric identifiers, persistent identifiers including IP address; as well as medical, health or insurance information; or (ii) is "personal information", "personal data" or similar defined term protected by one or more of the applicable Privacy, Security and Consumer Protection Laws.

"**PTE**" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"**Public Company Costs**" shall mean any costs, fees and expenses associated with, in anticipation of, or in preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and costs, fees and expenses relating to compliance with the provisions of the Securities Act and the Exchange Act (as applicable to companies with equity or debt securities held by the public), the rules of national securities exchanges for companies with listed equity or debt securities, directors' or managers' compensation, fees and expense reimbursements, any charges, expenses, costs, accruals, reserves, payments, fees and expenses or loss of any kind relating to investor relations, shareholder meetings and reports to shareholders and debtholders, directors' and officers' insurance and other executive costs, legal and other professional fees and listing fees.

"**Public Side Communications**" shall have the meaning assigned to such term in Section 10.01(f).

"**Public Siders**" shall have the meaning assigned to such term in Section 10.01(f).

"**Purchase Money Obligation**" shall mean, for any Person, the obligations of such Person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or Capital Assets or the cost of installation, construction or improvement of any fixed or Capital Assets and any refinancing thereof; *provided*, *however*, that (i) such Indebtedness is incurred no later than 180 days after the acquisition, installation, construction, repair, replacement, exchange or improvement of such fixed or Capital Assets by such Person, (ii) the amount of such Indebtedness (excluding any costs, expenses and fees incurred in connection therewith) does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be, and (iii) the Liens granted with respect thereto do not at any time encumber any property other than the property financed by such Indebtedness (with respect to Capital Lease Obligations, the Liens granted with respect thereto do not at any time extend to or cover any assets other than the assets subject to such Capital Lease Obligations).

"**Qualified Capital Stock**" of any Person shall mean any Equity Interests of such Person that are not Disqualified Capital Stock.

"**Rate Charges**" shall have the meaning assigned to such term in Section 10.14.

"**Real Property**" shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Recurring Revenue Covenant**" shall have the meaning assigned to such term in Section 8.03(a).

"**Recurring Revenue Cure Quarter**" shall have the meaning assigned to such term in Section 8.03(a).

"**Recurring Revenue Cure Expiration Date**" shall have the meaning assigned to such term in Section 8.03(a).

"**Recipient**" shall mean any Agent and any Lender, as applicable.

"**Refinanced Debt**" shall have the meaning assigned to such term in the definition of "Credit Agreement Refinancing Indebtedness."

"**Refinancing Amendment**" shall mean an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Lender and Additional Lender that agrees to provide any portion of the Credit Agreement Refinancing Indebtedness being incurred pursuant thereto.

"**Refinancing Commitments**" shall mean one or more Tranches of Commitments hereunder that result from a Refinancing Amendment.

"**Refinancing Loans**" shall mean one or more Tranches of Loans that result from a Refinancing Amendment.

"**Register**" shall have the meaning assigned to such term in Section 10.04(c).

"**Regulation D**" shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation S-X**" shall mean Regulation S-X promulgated under the Securities Act.

"**Regulation T**" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation U**" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation X**" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Rejection Notice**" shall have the meaning assigned to such term in Section 2.10(j).

"**Related Parties**" shall mean, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agents, controlling Persons, advisors, and representatives of such Person and of such Person's Affiliates, *provided* that "Related Parties" shall not include Excluded Affiliates.

"**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Material into the Environment.

"**Required Debt Terms**" shall mean in respect of any Indebtedness, the following requirements: (i) such Indebtedness (x) does not have a maturity date or have any mandatory prepayment or redemption features (other than customary asset sale events, insurance and condemnation proceeds events, change of control offers or events of default, AHYDO catch-up payments and excess cash flow and indebtedness sweeps), in each case prior to the date that is 91 days after the then Latest Maturity Date at the time such Indebtedness is incurred and (y) does not have a shorter Weighted Average Life to Maturity than the Loans, (ii) such Indebtedness is not guaranteed by any Subsidiaries of the Borrower that are not Guarantors, (iii) if such Indebtedness is secured by the Collateral, a Senior Representative acting on behalf of the holders of such Indebtedness has become party to an Intercreditor Agreement, (iv) to the extent secured, any such Indebtedness is not secured by assets not constituting Collateral (unless such Indebtedness is incurred by a Restricted Subsidiary that is not a Credit Party), (v) any such Indebtedness that is payment subordinated shall be subject to a subordination agreement on terms that are reasonably acceptable to the Administrative Agent and the Borrower, (vi) solely with respect to Permitted Pari Passu Refinancing Debt and Junior Secured Indebtedness, the terms and conditions of such Indebtedness (excluding pricing, interest rate margins, rate floors, discounts, premiums, fees, and prepayment or redemption terms, customary cushions to the covenants and financial covenants (which shall be applied for Junior Secured Indebtedness), and provisions which shall be determined by the Borrower) are substantially identical to the Borrower and its Subsidiaries (when taken as a whole) to the terms and conditions of this Agreement (when taken as a whole), or (when taken as a whole) are less favorable to the Lenders providing such Indebtedness (as determined by the Borrower in good faith) (except for covenants or other provisions applicable only to periods after the applicable Latest Maturity Date, or that are added to this Agreement for the benefit of the Lenders hereunder or that reflect market terms and conditions (taken as a whole) at the time of incurrence or issuance of such Indebtedness (as determined by the Borrower in good faith) (it being understood that to the extent that any financial maintenance covenant is added for the benefit of any such Indebtedness or a materially more restrictive term is provided for the benefit of such Indebtedness, no consent shall be required from the Administrative Agent if such financial covenant or other terms are added to this Agreement) and (vii) solely with respect to Indebtedness incurred pursuant to Sections 6.01(r) and (s) and Permitted Unsecured Refinancing Debt, shall for purposes of mandatory prepayments not be treated more favorably than the existing Loans; *provided*, *further*, that a certificate delivered to the Administrative Agent at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirements of this definition, shall be conclusive evidence that such terms and conditions satisfy the requirements of this definition unless the Administrative Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees).

"**Required Lenders**" shall mean Lenders having more than 50% of the sum of all Loans outstanding and Commitments.

"**Requirements of Law**" shall mean, collectively, all international, foreign, federal, state and local laws (including common law), judgments, decrees, statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, or other requirements of, any Governmental Authority, in each case whether or not having the force of law.

"**Resolution Authority**" shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" of any Person shall mean any executive officer (including, without limitation, the president, any vice president, secretary and assistant secretary), any authorized person or Financial Officer of such Person and any other officer or similar official or authorized person thereof with responsibility for the administration of the obligations of such Person in respect of this Agreement and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Credit Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Credit Party designated in or pursuant to an agreement between the applicable Credit Party and the Administrative Agent.

"**Restricted Debt Payment**" shall have the meaning assigned to such term in Section 6.09(a).

"**Restricted Subsidiary**" shall mean each Subsidiary of the Borrower other than any Unrestricted Subsidiary.

"**S&P**" shall mean Standard & Poor's Ratings Service, a division of McGraw Hill Companies, Inc.

"**Sale Leaseback Transaction**" shall mean any arrangement, directly or indirectly, with any Person whereby the Borrower or any of its Restricted Subsidiaries shall sell, transfer or otherwise dispose of any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property (or use such property through the lease of an Affiliate) or other property that it intends to use (other than any such arrangement between Credit Parties or between Restricted Subsidiaries that are not Credit Parties); *provided* that (a) no Event of Default shall have occurred and be continuing or would immediately result therefrom and (b) such Sale Leaseback Transaction is consummated within 180 days of the disposition of such property.

"**Sanctions**" shall have the meaning assigned to such term in Section 3.20.

"**SEC**" shall mean the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Secured Net Annual Recurring Revenue Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Secured Debt of the Borrower and its Restricted Subsidiaries on such date minus (ii) Unrestricted Cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries in an aggregate amount not to exceed $20,000,000 to (b) Annual Recurring Revenue of the Borrower and its Restricted Subsidiaries as of such date, in each case on a Pro Forma Basis (other than (a)(ii)).

"**Secured Obligations**" shall mean the Obligations.

"**Secured Parties**" shall mean, collectively, (i) the Administrative Agent, (ii) the Collateral Agent, (iii) the Lenders and (iv) each other Agent.

"**Securities Account**" shall have the meaning assigned to such term in the Security Agreement.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Security Agreement**" shall mean one or more security agreements by and among one or more of the Credit Parties and the Collateral Agent for the benefit of the Secured Parties with respect to Liens granted on the Collateral thereunder as security for the Secured Obligations.

"**Security Agreement Collateral**" shall mean all property pledged or granted, or purported to be pledged or granted, as collateral pursuant to a Security Agreement, including, without limitation, as required pursuant to Section 5.10 or Section 5.11 and in each case other than Excluded Property.

"**Security Documents**" shall mean the Security Agreements, the Mortgages (if any) and each other security document or pledge agreement delivered in accordance with applicable local law to grant a valid, perfected security interest in any property as Collateral for the Secured Obligations, and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest in or lien on any property as Collateral for the Secured Obligations.

"**Senior Notes Indebtedness**" shall mean (i) the Borrower's 2.875% Convertible Senior Notes due 2026 and (ii) the Borrower's 4.500% Convertible Senior Notes due 2024.

"**Senior Representative**" shall mean the trustee, sole lender, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

"**Solvent**" shall mean, (i) the Fair Value of the assets of Borrower and its Subsidiaries taken as a whole exceeds their Liabilities, (ii) the Present Fair Salable Value of the assets of Borrower and its Subsidiaries taken as a whole exceeds their Liabilities; (iii) Borrower and its Subsidiaries taken as a whole do not have Unreasonably Small Capital; and (iv) Borrower and its Subsidiaries taken as a whole will be able to pay their Liabilities as they mature. For purposes hereof, (i) "Fair Value" shall mean the amount at which the assets (both tangible and intangible), in their entirety, of Borrower and its Subsidiaries taken as a whole would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act, (ii) "Present Fair Salable Value" shall mean the amount that could be obtained by an independent willing seller from an independent willing buyer if the assets of Borrower and its Subsidiaries taken as a whole are sold with reasonable promptness in an arm's-length transaction under present conditions for the sale of comparable business enterprises insofar as such conditions can be reasonably evaluated, (iii) "Liabilities" shall mean the recorded liabilities (including contingent liabilities that would be recorded in accordance with GAAP) of Borrower and its Subsidiaries taken as a whole, as of the date hereof after giving effect to the consummation of the transactions to occur on the date hereof, determined in accordance with GAAP consistently applied, (iv) "Will be able to pay their Liabilities as they mature" shall mean for the period from the date hereof through the Maturity Date, Borrower and its Subsidiaries taken as a whole will have sufficient assets and cash flow to pay their Liabilities as those liabilities mature or (in the case of contingent Liabilities) otherwise become payable, in light of business conducted or anticipated to be conducted by the Borrower and its Subsidiaries as reflected in the projected financial statements and in light of the anticipated credit capacity, and (v) "Do not have Unreasonably Small Capital" shall mean Borrower and its subsidiaries taken as a whole after consummation of the Transactions is a going concern and has sufficient capital to reasonably ensure that it will continue to be a going concern for the period from the date hereof through the Maturity Date.

"**Specified Existing Tranche**" shall have the meaning assigned to such term in Section 2.21(a).

"**Statutory Reserves**" shall mean for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against "**Eurocurrency liabilities**" (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurocurrency liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D.

"**Subject Transaction**" shall mean any (a) disposition of all or substantially all of the assets of or all of the Equity Interests of any Restricted Subsidiary or of any product line, business unit, line of business (including, without limitation, a product line) or division of the Borrower or any of the Restricted Subsidiaries, in each case to the extent permitted hereunder, (b) Permitted Acquisition, (c) other Investment that is permitted hereunder that results in a Person becoming a Subsidiary, (d) designation of any Restricted Subsidiary as an Unrestricted Subsidiary, (e) incurrence of Indebtedness or making of a Dividend or a Restricted Debt Payment or (f) any non-ordinary course restructurings, cost savings and similar initiatives, operating improvements and synergy realizations (solely to the extent permitted to be added back pursuant to the definition of Consolidated EBITDA or Pro Forma Basis).

"**Subordinated Indebtedness**" shall mean Indebtedness of the Borrower or any Guarantor that is by its terms subordinated in right of payment to the Obligations of the Borrower and such Guarantor, as applicable; *provided* that such terms of subordination and the intercreditor documentation with respect thereto, are reasonably acceptable to the Administrative Agent.

"**Subsidiary**" shall mean, with respect to any Person (the "**parent**") at any date, (i) any Person the accounts of which would be consolidated with those of the parent's in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (ii) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (iii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (iv) any other Person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent. Unless otherwise specified, references to "Subsidiary" or "Subsidiaries" herein shall refer to Subsidiaries of the Borrower.

"**Subsidiary Guarantor**" shall mean each Domestic Subsidiary of the Borrower that is or becomes pursuant to Section 5.10 a party to this Agreement; *provided* that, notwithstanding anything to the contrary, no Excluded Subsidiary shall be a Subsidiary Guarantor.

"**Tax Group**" shall have the meaning assigned to such term in Section 6.06(b).

"**Tax Return**" shall mean all returns, statements, declarations, reports, filings, attachments and other documents or certifications required to be filed in respect of Taxes, including any amendments thereof.

"**Tax Withholdings**" shall have the meaning assigned to such term in Section 2.15(a).

"**Taxes**" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Test Period**" shall mean, at any time, subject to Section 1.06, (x) for purposes of calculating Annual Recurring Revenue, the last day of the fiscal quarter of the Borrower then last ended and (y) for all other purposes, the four consecutive fiscal quarters of the Borrower then last ended (in each case taken as one accounting period), in each case, for which financial statements have been or were required to be delivered pursuant to Section 5.01(a) or (b).

"**Total Consideration**" shall mean (without duplication), with respect to any Permitted Acquisition, the sum of (a) cash paid as consideration to the seller in connection with such Permitted Acquisition (other than Earn-Outs), *plus* (b) Indebtedness for borrowed money payable to the seller in connection with such Permitted Acquisition (other than Earn-Outs), *plus* (c) the present value of future payments which are required to be made over a period of time and are not contingent upon the Borrower or any of its Restricted Subsidiaries meeting financial performance objectives (exclusive of salaries paid in the ordinary course of business) (discounted at ABR), *plus* (d) the amount of Indebtedness for borrowed money assumed in connection with such Permitted Acquisition, *minus* (e) the aggregate principal amount of equity contributions made to the Borrower the proceeds of which are used substantially contemporaneously with such contribution to fund all or a portion of the cash purchase price (including deferred payments) of such Permitted Acquisition, *minus* (f) any cash and Cash Equivalents on the balance sheet of the target entity acquired as part of the applicable Permitted Acquisition, *minus* (g) all transaction costs incurred in connection therewith; *provided* that Total Consideration shall not include any consideration or payment (y) paid by the Borrower or its Restricted Subsidiaries directly in the form of Equity Interests of the Borrower (or any direct or indirect parent company thereof) (other than Disqualified Capital Stock) or (z) funded by cash and Cash Equivalents generated by any Excluded Subsidiary.

"**Total Net Annual Recurring Revenue Leverage Ratio**" shall mean, as of any date of determination, the ratio of (a) (i) Consolidated Total Funded Indebtedness of the Borrower and its Restricted Subsidiaries on such date minus (ii) Unrestricted Cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries in an aggregate amount not to exceed $20,000,000 to (b) Annual Recurring Revenue of the Borrower and its Restricted Subsidiaries as of such date, in each case on a Pro Forma Basis (other than (a)(ii)).

"**Tranche**" shall mean each tranche of Loans and/or Commitments available hereunder. On the Closing Date there shall be one tranche, comprised of the Loans.

"**Transaction Documents**" shall mean the Closing Date Acquisition Documents and the Loan Documents.

"**Transactions**" shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Closing Date Acquisition Documents and the Loan Documents; the execution, delivery and performance of the Closing Date Acquisition Documents, the Loan Documents and the initial Borrowings hereunder; the Closing Date Refinancing; and the payment of all fees, costs and expenses owing in connection with the foregoing.

"**Transferred Guarantor**" shall have the meaning assigned to such term in Section 7.09.

"**Type**" when used in reference to any Loan or Borrowing, shall mean a reference to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"**UK Financial Institution**" shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**United States**" or "**U.S.**" shall mean the United States of America.

"**Unrestricted Cash**" shall mean, at any time, the aggregate amount of unrestricted cash and Cash Equivalents held in Deposit Accounts or Securities Accounts of the Borrower and its Restricted Subsidiaries (whether or not held in an account pledged to the Administrative Agent) that is free and clear of all Liens other than (i) Liens created by the Loan Documents or (ii) other Liens permitted hereunder; *provided* that any such Liens are subordinated to or *pari passu* with the Liens in favor of the Administrative Agent or Collateral Agent (and perfected to no greater extent than the Liens on such cash and Cash Equivalents in favor of the Administrative Agent).

"**Unrestricted Subsidiary**" shall mean (a) any Subsidiary of the Borrower that is formed or acquired after the Closing Date; *provided* that the Borrower designates such Subsidiary an Unrestricted Subsidiary in a notice to the Administrative Agent, (b) any Restricted Subsidiary subsequently designated as an Unrestricted Subsidiary by the Borrower in a written notice to the Administrative Agent, and (c) each Subsidiary of an Unrestricted Subsidiary; *provided* that in the case of clauses (a) and (b) above, (i) such designation shall be deemed to be an Investment on the date of such designation in an amount equal to the fair market value of the investment therein and such designation shall be permitted only to the extent permitted under Section 6.03 on the date of such designation, (ii) no Event of Default shall have occurred and be continuing or would immediately result from such designation after giving pro forma effect thereto (including the re-designation of Indebtedness and Liens on the assets of such Subsidiary as Indebtedness and Liens on assets of an Unrestricted Subsidiary), (iii) immediately after giving effect to any such designation, on a Pro Forma Basis (including, for the avoidance of doubt, giving pro forma effect to the re-designation of Indebtedness and Liens on the assets of such Subsidiary as Indebtedness and Liens on assets of an Unrestricted Subsidiary), as of the date of determination and for the applicable Test Period, the First Lien Net Annual Recurring Revenue Leverage Ratio does not exceed 1.60 to 1.00, and (iv) no Subsidiary of the Borrower that exists as of the Closing Date shall be permitted to be designated as an Unrestricted Subsidiary.

The Borrower may, by written notice to the Administrative Agent, re-designate any Unrestricted Subsidiary as a Restricted Subsidiary (which shall constitute a reduction in any outstanding Investment), and thereafter, such Subsidiary shall no longer constitute an Unrestricted Subsidiary, but only if (a) no Event of Default shall have occurred and be continuing or would immediately result from such re-designation (including the re-designation of Indebtedness and Liens on the assets of such Subsidiary as Indebtedness and Liens on assets of a Restricted Subsidiary and the deemed return on any Investment in such Unrestricted Subsidiary pursuant to clause (y)) and (b) immediately after giving effect to any such re-designation (including the re-designation of Indebtedness and Liens on the assets of such Subsidiary as Indebtedness and Liens on assets of a Restricted Subsidiary and the deemed return on any Investment in such Unrestricted Subsidiary pursuant to clause (y)), on a Pro Forma Basis, as of the date of determination and for the applicable Test Period, the Total Net Annual Recurring Revenue Leverage Ratio does not exceed 1.60 to 1.00. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (x) the incurrence by such Restricted Subsidiary at the time of such designation of any Indebtedness or Liens of such Restricted Subsidiary outstanding at such time (after giving effect to, and taking into account, any payoff or termination of Indebtedness or any release or termination of Liens, in each case, occurring in connection or substantially concurrently therewith) and (y) constitute a return on any Investment by the Borrower in such Unrestricted Subsidiary in an amount equal to the fair market value at the date of such prior designation of such Restricted Subsidiary as an Unrestricted Subsidiary (solely for purposes of Section 6.03(q)). Notwithstanding anything herein to the contrary, the annual recurring revenue (defined in a manner consistent with Annual Recurring Revenue) of the Unrestricted Subsidiaries shall not in the aggregate represent in excess of 5.0% of the Annual Recurring Revenue of the Group Members on a consolidated basis as of any date. Notwithstanding anything else to the contrary, (I) no Subsidiary may be designated as an Unrestricted Subsidiary if (i) such designated Unrestricted Subsidiary shall directly or indirectly own any equity or debt of, or hold a Lien on any property of, the Borrower or any Person that will remain a Restricted Subsidiary, (ii) the Borrower or any other Person that will remain a Restricted Subsidiary shall be directly or indirectly liable for Indebtedness that provides that the holder thereof may (with the passage of time or notice or both) declare a default thereon or cause the payment to be accelerated or payable prior to its stated maturity thereof upon the occurrence of a default with respect to any Indebtedness, Lien or other obligation of such Unrestricted Subsidiary (including any right to take enforcement actions against such Unrestricted Subsidiary) and (II) no Unrestricted Subsidiary shall develop (or own) any Intellectual Property that is material to the Credit Parties, or, to the extent any Unrestricted Subsidiary develops (or owns) such material Intellectual Property, (A) such Intellectual Property will be transferred to a Restricted Subsidiary as soon as is reasonably practicable (in the good faith determination of the Borrower) after the determination that such Intellectual Property is material or (B) such Unrestricted Subsidiary is designated as a Restricted Subsidiary as soon as is reasonably practicable (in the good faith determination of the Borrower) after the determination that such Intellectual Property is material.

"**Voting Stock**" shall mean, with respect to any Person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such Person.

"**Weighted Average Life to Maturity**" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment by (ii) the then outstanding principal amount of such Indebtedness; *provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness or Disqualified Capital Stock that is being modified, refinanced, refunded, renewed, replaced or extended, the effects of any prepayments or amortization made on such Indebtedness or Disqualified Capital Stock prior to the date of the applicable modification, refinancing, refunding, renewal, replacement or extension shall be disregarded.

"**Wholly Owned Subsidiary**" shall mean, as to any Person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares or other nominal issuance in order to comply with local laws) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such Person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a 100% equity interest at such time.

"**Withholding Agent**" shall mean any Credit Party and the Administrative Agent.

"**Write-Down and Conversion Powers**" shall mean, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"**Yield**" shall have the meaning assigned to such term in Section 2.20(d).

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a "Eurodollar Loan"). Borrowings also may be classified and referred to by Type (*e.g.*, a "Eurodollar Borrowing").

Section 1.03 Terms Generally.

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (i) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, replaced or otherwise modified (subject to any restrictions on such amendments, supplements, replacements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignments set forth herein), (iii) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (v) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (vii) all references to the knowledge of any Group Member or facts known by any Group Member shall mean actual knowledge of any Responsible Officer of such Person. Any Responsible Officer or Financial Officer executing any Loan Document or any certificate or other document made or delivered pursuant hereto or thereto, so executes or certifies in his/her capacity as a Responsible Officer or Financial Officer, as applicable, on behalf of the applicable Credit Party and not in any individual capacity.

(b) The term "enforceability" and its derivatives when used to describe the enforceability of an agreement shall mean that such agreement is enforceable except as enforceability may be limited by any Debtor Relief Law and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(c) Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; *provided* that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

(d) For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.04 Accounting Terms; GAAP; Tax Laws. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on December 31, 2018; *provided* that in the event a change in GAAP occurs, the Borrower may, at its election in its sole discretion and upon notice to the Administrative Agent, until such time as the audited financial statements for such fiscal year are required to be delivered pursuant to Section 5.01(a), prepare any unaudited financial statement to be delivered pursuant to Section 5.01(b) of this Agreement during such fiscal year in accordance with GAAP without giving effect to such change in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio, standard or term set forth in any Loan Document but for the operation of the first sentence of this Section 1.04, and the Borrower shall so request, the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio, standard or term to preserve the original intent thereof in light of such change in GAAP; *provided* that, until so amended, such ratio, standard or term shall continue to be computed in accordance with GAAP without giving effect to such change therein. The Borrower shall provide to the Administrative Agent and the Lenders, concurrently with the delivery of each certificate or financial report required hereunder at a time when a change in GAAP is being accounted for differently as between the preparation of financial statements and the calculation of any financial ratio, term or standard hereunder, a written statement of a Financial Officer of the Borrower setting forth in reasonable detail the differences (including any differences that would affect any calculations relating to the Financial Covenants as set forth in Section 6.08) that resulted from such differences in the application of the change in GAAP as a result of the foregoing rules of construction. Notwithstanding anything to the contrary, for all purposes under this Agreement and the other Loan Documents, including negative covenants, financial covenants and component definitions, GAAP will be deemed to treat operating leases and Capital Leases in a manner consistent with their current treatment under GAAP as in effect on December 31, 2018, notwithstanding any modifications or interpretive changes thereto that may occur thereafter. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 or FASB ASC 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Restricted Subsidiaries at "fair value," as defined therein and (ii) the financial ratios and related definitions set forth in the Loan Documents shall be computed to exclude the application of Financial Accounting Standards No. 133, 150 or 123(R) or any other financial accounting standard having a similar result or effect (to the extent that the pronouncements in Financial Accounting Standards No. 123(R) result in recording an equity award as a liability on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries in the circumstance where, but for the application of the pronouncements, such award would have been classified as equity).

Notwithstanding anything to the contrary herein, if since the end of any Test Period and on or prior to the date of any required calculation of any financial ratio or test (x) any Subject Transaction shall have occurred (including, for the avoidance of doubt, any Subject Transaction whose permissibility is being tested and any substantially concurrent Subject Transactions) or (y) any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the end of such Test Period shall have consummated any Subject Transaction, then, in each case, any applicable financial ratio or test shall be calculated on a Pro Forma Basis for such Test Period as if such Subject Transaction had occurred as of the end of the applicable Test Period (it being understood, for the avoidance of doubt, that solely for purposes of calculating quarterly compliance with Section 6.08, the date of the required calculation shall be the last day of the Test Period, and no Subject Transaction occurring thereafter shall be taken into account).

Other than as provided in Section 1.06 below, for purposes of determining the permissibility of any action, change, transaction or event that by the terms of the Loan Documents requires a calculation of any financial ratio or test (including the First Lien Net Annual Recurring Revenue Leverage Ratio, the Total Net Annual Recurring Revenue Leverage Ratio and the amount of Consolidated EBITDA, Annual Recurring Revenue and Consolidated Total Assets), (x) such financial ratio or test shall be calculated at the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be, and no Default or Event of Default shall be deemed to have occurred solely as a result of a change in such financial ratio or test occurring after the time such action is taken, such change is made, such transaction is consummated or such event occurs, as the case may be and (y) such financial ratio or test shall be calculated (on a Pro Forma Basis if applicable) using the most recent financial statements which have been delivered by the Credit Parties in accordance with Section 5.01(a) or 5.01(b).

Notwithstanding anything to the contrary herein, (a) to the extent compliance with a financial ratio or test is calculated prior to the date financial statements are first delivered under Section 5.01(a) or (b), such calculation shall use the latest financial statements delivered pursuant to Section 4.01(m), and (b) any determination of pro forma compliance with the Financial Covenants for purposes of determining the permissibility under the Loan Documents of any transaction occurring on or prior to the last day of the first full fiscal quarter commencing after the Closing Date shall be made applying the covenant levels applicable to the Test Period ending the last day of the first full fiscal quarter commencing after the Closing Date.

Section 1.05 Resolution of Drafting Ambiguities. Each party hereto acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Section 1.06 Limited Condition Acquisition. Notwithstanding anything to the contrary herein, in the case of the incurrence of any Indebtedness (other than under any Incremental Facilities, which shall remain subject to the terms of Section 2.20 with respect to the impact, if any, of a Limited Condition Acquisition) or Liens or the making of any Permitted Acquisitions or other permitted Investments or fundamental changes in connection with a Limited Condition Acquisition, if the Borrower has made an LCA Election with respect to such Limited Condition Acquisition, the relevant ratios and the component amounts thereof (including Consolidated EBITDA, Annual Recurring Revenue, the First Lien Annual Recurring Revenue Leverage Ratio, Total Net Annual Recurring Revenue Leverage Ratio, Consolidated Total Funded Indebtedness or Consolidated Interest Expense (in each case)) (but other than any Financial Covenant under Section 6.08 (other than pro forma compliance with any Financial Covenant as a condition to effecting any transaction)) and baskets shall be determined as of the date the definitive agreements for such Limited Condition Acquisition are entered into and effective (and not, for the avoidance of doubt, the date of consummation of any Limited Condition Acquisition) (the "**LCA Test Date**"), and shall be calculated on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) were consummated on such LCA Test Date (but, for the avoidance of doubt, without giving effect to the cash proceeds of any indebtedness incurred to finance such Limited Condition Acquisition for the purposes of cash netting in the determination of any leverage multiples); *provided* that, (i) if the Borrower has made an LCA Election, in connection with the calculation of any ratio or basket with respect to the incurrence of any other Indebtedness or Liens, or the making of any Permitted Acquisitions or other permitted Investments, Dividends, Restricted Debt Payments, Asset Sales or other sales or dispositions of assets or fundamental changes on or following the applicable LCA Test Date and on prior to the earlier of (x) the date on which such Limited Condition Acquisition is consummated or (y) the date that the definitive agreement (or in the case of a Limited Condition Acquisition that involves some other manner of establishing a binding obligation under local law, such other binding obligation to consummate such transaction) for such Limited Condition Acquisition is terminated or expires, any such ratio or basket shall be calculated on a Pro Forma Basis (I) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (II) assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have not been consummated (in which case such ratios or baskets, as applicable, relating to such subsequent transaction shall be required to be satisfied under both the preceding clauses (I) and (II) to be in compliance with the terms of this Agreement) and (ii) no Event of Default shall exist on the LCA Test Date and no Event of Default under Section 8.01(a), (b), (g) or (h) shall exist the date on which such Limited Condition Acquisition is consummated.

Section 1.07 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York City time.

Section 1.08 Deliveries. Notwithstanding anything herein to the contrary, whenever any document, agreement or other item is required by any Loan Document to be delivered or completed on a day that is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day.

Section 1.09 Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

Section 1.10 Currency Generally.

(a) All Loans shall be made in U.S. dollars.

(b) For purposes of determining compliance with Sections 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07 or 6.09, with respect to any Indebtedness, Liens, Investments, liquidations, dissolutions, mergers, consolidations, Asset Sales or other dispositions, Dividends, affiliate transactions or Restricted Debt Payments in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time the Borrower or one of its Restricted Subsidiaries is contractually obligated to incur, enter into, make or acquire such Indebtedness, Liens, Investments, liquidations, dissolutions, mergers, consolidations, Asset Sales or other dispositions, Dividends, affiliate transactions or Restricted Debt Payments (so long as, at the time of entering into the contract to incur, enter into, make or acquire such Indebtedness, Liens, Investments, liquidations, dissolutions, mergers, consolidations, Asset Sales or other dispositions, Dividends, affiliate transactions or Restricted Debt Payments, such transaction was permitted hereunder) and once contractually obligated to be incurred, entered into, made or acquired, the amount of such Indebtedness, Liens, Investments, liquidations, dissolutions, mergers, consolidations, Asset Sales or other dispositions, Dividends, affiliate transactions or Restricted Debt Payments, shall be always deemed to be at the Dollar amount on such date, regardless of later changes in currency exchange rates.

(c) In respect of any relevant period, the exchange rates used in relation to calculating Consolidated Total Funded Indebtedness shall be the weighted average exchange rates used for determining Annual Recurring Revenue (or any component thereof) for the relevant period, provided that if the Borrower or any of its Restricted Subsidiaries has entered into any currency Hedging Agreement in respect of any borrowings, the currency and amount of such borrowings shall be determined by first taking into account the effects of that currency Hedging Agreement.

Section 1.11 Basket Amounts and Application of Multiple Relevant Provisions. Notwithstanding anything to the contrary, (a) unless specifically stated otherwise herein, any dollar, number, percentage or other amount available under any carve-out, basket, exclusion or exception to any affirmative, negative or other covenant in this Agreement or the other Loan Documents may be accumulated, added, combined, aggregated or used together by any Credit Party and its Subsidiaries without limitation for any purpose permitted hereby, and (b) any action or event permitted by this Agreement or the other Loan Documents need not be permitted solely by reference to one provision permitting such action or event but may be permitted in part by one such provision and in part by one or more other provisions of this Agreement and the other Loan Documents. For purposes of determining compliance with Article VI, in the event that any Lien, Investment, liquidation, dissolution merger, consolidation, Indebtedness, disposition, Dividend, Affiliate transaction, contractual requirement or prepayment of Indebtedness meets the criteria of one, or more than one, of the "baskets" or categories of transactions then permitted pursuant to any clause or subsection of Article VI, such transaction (or any portion thereof) at any time shall be permitted under one or more of such "baskets" or categories at the time of such transaction or any later time from time to time, in each case, as determined by the Borrower in its sole discretion at such time and thereafter may be reclassified or divided (as if incurred at such later time) by the Borrower (solely among baskets within a particular covenant (i.e. within Section 6.01)), other than with respect to Sections 6.06 and 6.09 thereof, in any manner not expressly prohibited by this Agreement, and such Lien, Investment, liquidation, dissolution merger, consolidation, Indebtedness, disposition, Dividend, Affiliate transaction, contractual requirement or prepayment of Indebtedness (or any portion thereof) shall be treated as having been incurred or existing pursuant to only such "basket" or category of transactions or "baskets" or categories of transactions (or any portion thereof) without giving pro forma effect to such item (or portion thereof) when calculating the amount of Liens, Investments, liquidations, dissolutions, mergers, consolidations, Indebtedness, dispositions, Dividends, Affiliate transactions, contractual requirements or prepayments of Indebtedness, as applicable, that may be incurred pursuant to any other "basket" or category of transactions.

ARTICLE II
THE CREDITS

Section 2.01 Commitments. Subject to the terms and conditions herein set forth, each Lender agrees, severally and not jointly, to make a Loan to the Borrower on the Closing Date in the principal amount of its Commitment. Amounts paid or prepaid in respect of Loans may not be reborrowed.

Section 2.02 Loans.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the applicable Lenders ratably in accordance with their applicable Commitments; *provided* that the failure of any Lender to make its Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). (x) ABR Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of $100,000 and not less than the Minimum Borrowing Amount or (ii) equal to the remaining available balance of the applicable Commitments and (y) the Eurodollar Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of $100,000 and not less than the Minimum Borrowing Amount or (ii) equal to the remaining available balance of the applicable Commitments.

(b) Subject to Sections 2.01, 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement. More than one Borrowing may be incurred on any day, but at no time shall there be outstanding more than, in the case of Loans maintained as Eurodollar Loans, seven (7) Borrowings of such Loans in the aggregate. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account as the Administrative Agent may designate not later than 12:00 (noon) New York City time, with respect to Eurodollar Loans, or 1:30 p.m. New York City time, with respect to ABR Loans, and upon receipt of all requested Loan funds, the Administrative Agent shall promptly wire all such requested amounts so received to an account as directed by the Borrower in the applicable Borrowing Request.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Borrowing Procedure. To request the Borrowing on the Closing Date, the Borrower shall deliver, by facsimile or other electronic transmission if arrangements for doing so have been approved in writing (including via email) by the Administrative Agent, a duly completed and executed Borrowing Request to the Administrative Agent, not later than 12:00 p.m., New York City time, (1) one Business Day before the date of the proposed Borrowing. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(a) the aggregate amount of such Borrowing;

(b) the date of such Borrowing, which shall be a Business Day;

(c) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(d) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "**Interest Period**"; and

(e) the location and number of the account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Eurodollar Borrowing with an Interest Period of one month's duration. If the Borrower requests a Eurodollar Borrowing but fails to specify an Interest Period, the Borrower will be deemed to have specified an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Evidence of Debt; Repayment of Loans.

(a) Promise to Repay. The Borrower unconditionally promises to pay to the Administrative Agent for the account of each Lender, the principal amount of each Loan of such Lender as provided in Section 2.09.

(b) Lender and Administrative Agent Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Type and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms. In the event of any conflict between the records maintained by any Lender and the records of the Administrative Agent in respect of such matters, the records of the Administrative Agent shall control in the absence of manifest error.

(c) Promissory Notes. Any Lender by written notice to the Borrower may request that Loans made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender or its registered assigns in the form of Exhibit F. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more Notes in such form payable to the payee named therein or its registered assigns.

Section 2.05 Fee Letters. The Borrower agrees to pay the fees set forth in the Fee Letter at the times and in the manner set forth therein.

Section 2.06 Interest on Loans.

(a) ABR Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin in effect from time to time.

(b) Eurodollar Loans. Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Default Rate. Notwithstanding the foregoing, (x) upon the occurrence and during the existence of an Event of Default under Sections 8.01(a), (b), (d) (solely with respect to the failure to comply with Section 6.08), (g) or (h), the Obligations hereunder shall bear interest from the date of such Event of Default (after as well as before judgment) at a *per annum* rate equal to (i) in the case of amounts constituting principal, 2.00% plus the rate otherwise applicable to such Loan as provided in Section 2.06(a) and Section 2.06(b) or (ii) in the case of any other Obligations that constitute overdue amounts (including overdue interest), 2.00% plus the rate applicable to ABR Loans as provided in Section 2.06(a) (in either case, the "**Default Rate**").

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; *provided* that (i) interest accrued pursuant to Section 2.06(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Calculation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Base Rate in clause (a) of the definition of "Alternate Base Rate" shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBO Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be deemed conclusive absent manifest error. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid within the time periods specified herein; provided that any Loan that is repaid on the same day on which it is made shall bear interest for one day.

Section 2.07 Termination of Commitments. The Commitments shall automatically terminate upon the funding of the Loans on the Closing Date.

Section 2.08 Interest Elections.

(a) Generally. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Interest Election Notice. To make an election pursuant to this Section, the Borrower shall deliver, by hand delivery or facsimile or other electronic transmission if arrangements for doing so have been approved in writing (including via email) by the Administrative Agent, a duly completed and executed Interest Election Request to the Administrative Agent not later than (x) in the case of an Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing, not later than 12:00 p.m., New York City time (or such later time on such Business Day as may be reasonably acceptable to the Administrative Agent), three (3) Business Days before the proposed effective date of such election and (y) in the case of a conversion of any Borrowing to an ABR Borrowing, not later than 12:00 p.m., New York City time (or such later time on such Business Day as may be reasonably acceptable to the Administrative Agent), one (1) Business Day before the proposed effective date of such election. Each Interest Election Request shall be irrevocable. Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below, as applicable, shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one (1) month's duration.

Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(c) Automatic Conversion. If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid or prepaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, the Administrative Agent or the Required Lenders may require, by notice to the Borrower, that (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing, and (ii) unless repaid or prepaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.09 Amortization of Loans. No amortization shall be required prior to the Maturity Date. To the extent not previously paid, all Loans shall be due and payable on the Maturity Date.

Section 2.10 Optional and Mandatory Prepayments of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay Loans without premium or penalty (except as and to the extent provided in Section 2.10(k) or Section 2.13), subject to the requirements of this Section 2.10; *provided* that each partial prepayment of any Loans shall be in a multiple of $250,000 and in an aggregate principal amount of at least $250,000.

(b) Equity Cure Contributions. Promptly following the receipt of any Equity Cure Contribution with respect to a cure of the Recurring Revenue Covenant, the Borrower shall make prepayments in accordance with Sections 2.10(i) and 2.10(j) in an aggregate principal amount equal to 100% of such Equity Cure Contribution.

(c) Asset Sales. Not later than ten (10) Business Days following the receipt of any Net Cash Proceeds of any Asset Sale by any Group Member (other than any issuance or sale of Equity Interests to or from any Group Member to another Group Member permitted hereunder), the Borrower shall apply an aggregate amount equal to 100% of such Net Cash Proceeds to make prepayments in accordance with Sections 2.10(i) and 2.10(j); *provided* that:

(i) no such prepayment shall be required under this clause (c) (A) with respect to any disposition of property which constitutes a Casualty Event, or (B) to the extent the aggregate amount of Net Cash Proceeds from all such Asset Sales, together with all Casualty Events, do not exceed $2,500,000 in any twelve month period (the "**Asset Sale/Casualty Event Threshold**" and the Net Cash Proceeds in excess of the Asset Sale/Casualty Event Threshold, the "**Excess Net Cash Proceeds**"); *provided* that, only such Excess Net Cash Proceeds shall subject to this Section 2.10(c);

(ii) so long as no Event of Default under Section 8.01(a), (b), (g) or (h) shall have occurred and be continuing, such proceeds with respect to any such Asset Sale shall not be required to be so applied on such date to the extent that the Borrower shall have notified the Administrative Agent on or prior to such date stating that such Excess Net Cash Proceeds are expected to be reinvested in assets used or useful in the business of any Group Member (including pursuant to a Permitted Acquisition, Investment or Capital Expenditure) or to be contractually committed to be so reinvested, within 15 months (or within 21 months following receipt thereof if a contractual commitment to reinvest is entered into within 15 months following receipt thereof) following the date of such Asset Sale; and

(iii) if all or any portion of such Excess Net Cash Proceeds that are the subject of a notice delivered pursuant to clause (ii) immediately above is neither reinvested nor contractually committed to be so reinvested within such 15 month period (or is not actually reinvested within such additional six (6) month period, if applicable), such unused portion shall be applied within ten (10) Business Days after the last day of such period as a mandatory prepayment as provided in this Section 2.10(c).

(d) Debt Issuance. Not later than one (1) Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance by any Group Member (or concurrently with the receipt of Net Cash Proceeds of any Debt Issuance by any Group Member in connection with a refinancing facility under Section 2.22), the Borrower shall make prepayments in accordance with Section 2.10(i) and (j) in an aggregate principal amount equal to 100% of such Net Cash Proceeds.

(e) Casualty Events. Not later than ten (10) Business Days following the receipt of any Net Cash Proceeds from a Casualty Event by any Group Member, the Borrower shall apply an amount equal to 100% of such Net Cash Proceeds to make prepayments in accordance with Section 2.10(i) and (j); *provided* that

(i) no such prepayment shall be required under this clause (e) (A) with respect to any disposition of property which constitutes an Asset Sale, or (B) to the extent the aggregate amount of Net Cash Proceeds from all such Casualty Events, together with Asset Sales, do not exceed the Asset Sale/Casualty Event Threshold; *provided* that, only such Excess Net Cash Proceeds shall subject to this Section 2.10(e)),

(ii) so long as no Event of Default under Section 8.01(a), (b), (g) or (h) shall have occurred and be continuing, the Borrower shall have notified the Administrative Agent on or prior to such date stating that such proceeds in excess of the Asset Sale/Casualty Event Threshold are expected (x) to be used to repair, replace or restore any Property in respect of which such Net Cash Proceeds were paid or to reinvest in other fixed or Capital Assets or assets that are otherwise used or useful in the business of the Group Members (including pursuant to a Permitted Acquisition, investment or Capital Expenditure), or (y) to be contractually committed to be so reinvested, in each case, no later than 15 months (or within 21 months following receipt thereof if such contractual commitment to reinvest has been entered into within 15 months following receipt thereof) following the date of receipt of such proceeds; and

(iii) if all or any portion of such Excess Net Cash Proceeds that are the subject of a notice delivered pursuant to clause (i) immediately above is neither reinvested nor contractually committed to be so reinvested within such 15 month period (or is not actually reinvested within such additional six (6) month period, if applicable), such unused portion shall be applied within ten (10) Business Days after the last day of such period as a mandatory prepayment as provided in this Section 2.10(e).

(f) Excess Cash Flow. No later than ten (10) Business Days after the date on which the financial statements with respect to each fiscal year of the Borrower in which an Excess Cash Flow Period occurs are required to be delivered pursuant to Section 5.01(a) (each such date, an "**ECF Payment Date**"), the Borrower shall, if and to the extent Excess Cash Flow for such Excess Cash Flow Period exceeds $5,000,000, make prepayments of Loans in accordance with Section 2.10(i) and (j) in an aggregate amount equal to (A) the Applicable ECF Percentage of Excess Cash Flow for the Excess Cash Flow Period then ended (for the avoidance of doubt, including the $5,000,000 floor referenced above) minus (B) $5,000,000 minus (C) at the option of the Borrower, the aggregate principal amount of any Loans or Incremental Loans (or, in each case, any Credit Agreement Refinancing Indebtedness in respect thereof), in each case prepaid pursuant to Section 2.10(a), Section 2.16(b)(B) or Section 10.02(e)(i) (or pursuant to the corresponding provisions of the documentation governing any such Credit Agreement Refinancing Indebtedness), during the applicable Excess Cash Flow Period (or, at the option of the Borrower and without duplication, after such Excess Cash Flow Period and prior to such ECF Payment Date), and in the case of all such prepayments or buybacks, to the extent that (1) such prepayments or buybacks were financed with sources other than the proceeds of long-term Indebtedness (other than revolving Indebtedness) of the Borrower or its Restricted Subsidiaries and (2) such prepayment or buybacks did not reduce the amount required to be prepaid pursuant to this Section 2.10(f) in any prior Excess Cash Flow Period (such payment, the "**ECF Payment Amount**").

(g) [Reserved].

(h) Notwithstanding the foregoing, (i) to the extent that any or all of the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary (or a U.S. Subsidiary of a Foreign Subsidiary) (a "**Foreign Disposition**") or the Net Cash Proceeds of any Casualty Event from a Foreign Subsidiary (or a U.S. Subsidiary of a Foreign Subsidiary) (a "**Foreign Casualty Event**"), in each case giving rise to a prepayment event pursuant to clause (c), (e) or (f) are or is prohibited, restricted or materially delayed by applicable local law, rule or regulation (including, without limitation, financial assistance and corporate benefit restrictions and fiduciary and statutory duties of any director or officer of such Subsidiaries) from being repatriated to the Borrower or so prepaid or such repatriation or prepayment would present a material liability for the applicable Subsidiary or its directors or officers (or gives rise to a material breach of fiduciary or statutory duties by any director or officer), the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.10 but may be retained by the applicable Foreign Subsidiary and (ii) to the extent that the Borrower has determined in good faith that repatriation of any or all of the Net Cash Proceeds of any Foreign Disposition or any Foreign Casualty Event, in each case giving rise to a prepayment event pursuant to clause (c), (e) or (f) would result in material adverse tax consequences, the Net Cash Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.10 but may be retained by the applicable Foreign Subsidiary. The non-application of any such prepayment amounts as a result of the foregoing provisions will not constitute a Default or an Event of Default and such amounts shall be available for working capital purposes of the Borrower and its Restricted Subsidiaries as long as not required to be prepaid in accordance with the following provisions. The Borrower shall not be required to monitor any Payment Block and/or reserve cash for future repatriation after the Borrower has notified the Administrative Agent of the existence of such Payment Block.

(i) Application of Prepayments. Prior to any optional or mandatory prepayment hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.10(j), subject to the provisions of this Section 2.10(i). Subject to Section 2.10(k) below, all optional prepayments will be applied *pro rata* amongst each Tranche of outstanding Loans and, within each Tranche, as directed by the Borrower (and absent such direction, in direct order of maturity thereof). Any prepayments pursuant to Section 2.10(b), (c), (d), (e) and (f) (or any equivalent provision applicable to any Tranche of Loans extended hereunder after the Closing Date), shall be applied *pro rata* amongst each Tranche of outstanding Loans and, within each Tranche, first, to accrued interest and fees with respect to Loans being prepaid and second, to reduce the remaining principal amount of the Loan.

Notwithstanding anything herein to the contrary, with respect to any prepayment under Section 2.10(c), (e) or (f), the Borrower may use a portion of the Net Cash Proceeds to prepay or repurchase Permitted Pari Passu Refinancing Debt and any other senior Indebtedness in each case secured by the Collateral on a *pari passu* basis with the Liens securing the Obligations (the "**Applicable Other Indebtedness**") to the extent required pursuant to the terms of the documentation governing such Applicable Other Indebtedness, in which case, the amount of the prepayment required to be offered with respect to such Net Cash Proceeds pursuant to Section 2.10(c), (e) or (f) shall be deemed to be the amount equal to the product of (x) the amount of such Net Cash Proceeds *multiplied* by (y) a fraction, the numerator of which is the outstanding principal amount of Loans required to be prepaid pursuant to Section 2.10(c), (e) or (f) and the denominator of which is the sum of the outstanding principal amount of Loans required to be prepaid pursuant to Section 2.10(c), (e) or (f) and the outstanding principal amount of such Applicable Other Indebtedness required to be prepaid pursuant to the corresponding provisions of such Applicable Other Indebtedness.

(j) Notice of Prepayment. The Borrower shall notify the Administrative Agent by written notice of any prepayment hereunder (i) in the case of prepayments of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time three (3) Business Days before the date of prepayment (or such later time as may be agreed by the Administrative Agent) and (ii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m. New York City time two (2) Business Days prior to the date of prepayment (or such later time as may be agreed by the Administrative Agent). Each such notice shall be irrevocable; *provided* that a notice of prepayment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of any such other credit facilities or the closing of any such securities offering, or the occurrence of any other event specified therein, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. With respect to the effectiveness of any such other credit facilities or the closing of any such securities offering, the Borrower may extend the date of prepayment at any time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed). Each such notice shall specify the Borrowing to be repaid, the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Credit Extension of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.10. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06. Notwithstanding the foregoing, each Lender may reject all or a portion of its *pro rata* share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Loans required to be made pursuant to clauses (c), (d) (other than mandatory prepayments with the proceeds of Credit Agreement Refinancing Indebtedness), (e) and (f) of this Section 2.10 by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 3:00 p.m. one (1) Business Day prior to the date of such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory prepayment of Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory repayment of Loans. Any Declined Proceeds may be retained by the Borrower or otherwise applied as directed by the Borrower.

(k) Loan Call Protection.

(i) All (i) optional prepayments of the Loans pursuant to Section 2.10(a) and (ii) all mandatory prepayments and repayments of the Loans pursuant to Sections 2.10(c) (except for mandatory prepayments in connection with a Casualty Event), (d) or (e) or (iii) otherwise following any acceleration of the Obligations, in each case, made or required to be made prior to the third anniversary of the Closing Date (whether before or after an Event of Default, an acceleration of the Obligations or the commencement of any bankruptcy or insolvency proceeding), shall be subject to a premium (to be paid to the Administrative Agent for the benefit of the Lenders as liquidated damages and compensation for the costs of being prepared to make funds available hereunder with respect to the Loans) equal to the Applicable Prepayment Premium. Notwithstanding anything to the contrary contained in this Agreement, to the extent that any Non-Consenting Lender is replaced pursuant to Section 10.02(e) due to such Lender's failure to approve a consent, waiver or amendment, as the case may be, such Non-Consenting Lender shall be entitled to receive a premium in connection with such replacement or prepayment in the amount that would have been payable in respect of the Loans of such Non-Consenting Lender, as applicable, under this clause (k) had such Loans been the subject of a voluntary prepayment at such time. On or after the third anniversary of the Closing Date, no premiums shall be payable pursuant to this Section 2.10(k) in connection with any prepayments of the Loans. The Applicable Prepayment Premium shall be fully earned and payable with respect to the full outstanding principal amount of the Loans at the time of any acceleration or commencement of any bankruptcy or insolvency proceeding or termination prior to the third anniversary of the Closing Date. The Applicable Prepayment Premium, if any, shall constitute part of the Obligations. In view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof, any Applicable Prepayment Premium payable shall be presumed to by the liquidated damages sustained by each Lender as the result of the early termination and/or repayment of the Loans and Borrower agrees that it is reasonable under the circumstances currently existing.

(ii) [Reserved.]

(iii) The Applicable Prepayment Premium, if any, shall also be payable in the event the Obligations (and/or this Agreement or the Notes evidencing the Obligations) are satisfied or released by foreclosure (whether by power of judicial proceeding, deed in lieu of foreclosure or by any other means). THE BORROWER EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY ACCELERATION OF THE LOANS. Borrower expressly acknowledges: (A) the Applicable Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Applicable Prepayment Premium; and (D) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.10(k). Borrower expressly acknowledge that their agreement to pay the Applicable Prepayment Premium to the Lenders as herein described is a material inducement to the Lenders to provide the Commitments and make the Loans.

Section 2.11 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines in good faith and in its reasonable discretion (which determination shall be deemed presumptively correct absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period;

(b) the Administrative Agent determines in good faith and in its reasonable discretion or is advised in writing by the Required Lenders (which determination shall be deemed presumptively correct absent manifest error) that Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan; or

(c) the Administrative Agent determines in good faith and in its reasonable discretion or is advised in writing by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period (collectively with the Loans described in clauses (a) and (b) above, the "**Impacted Loans**");

then, subject to the second paragraph of the definition of "LIBO Rate", the Administrative Agent shall give written notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist (which notice shall be delivered by the Administrative Agent within five (5) Business Days after such situation ceases to exist), any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective.

If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) or the Borrower notifies the Administrative Agent that either (i) the circumstances set forth in clauses (a) through (c) of this Section 2.11 have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clauses (a) through (c) of this Section 2.11 have not arisen but the supervisor for the administrator of LIBOR or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate or LIBOR, as applicable, shall no longer be used for determining interest rates for loans (in the case of either such clause (i) or (ii), an "**Alternative Interest Rate Election Event**"), then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent shall (in consultation with the Borrower) endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for leveraged loans in the United States at such time, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 10.02, such amendment shall become effective without any further action or consent of any other party to this Agreement; *provided* that, in the event that the proposed alternate rate of interest to the LIBO Rate is not consistent with the then prevailing market convention for determining a rate of interest for leveraged loans in the United States at such time, the Administrative Agent shall not have received, within five (5) Business Days after the date notice of such alternate rate of interest is provided to the Lenders, a written notice from Required Lenders stating that they object to such amendment (which amendment shall not be effective prior to the end of such five (5) Business Day notice period). To the extent an alternate rate of interest is adopted as contemplated hereby, the approved rate shall be applied in a manner consistent with prevailing market convention; *provided* that, to the extent such prevailing market convention is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent (in consultation with the Borrower). From such time as an Alternative Interest Rate Election Event has occurred and continuing until an alternate rate of interest has been determined in accordance with the terms and conditions of this paragraph, (x) any notice that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Loan shall be ineffective; *provided* that, to the extent such Alternative Interest Rate Election Event is as a result of clause (ii) above in this paragraph, then clauses (x) and (y) of this sentence shall apply during such period only if the LIBO Rate for such Interest Period is not available or published at such time on a current basis. Notwithstanding anything contained herein to the contrary, if such alternate rate of interest as determined in this paragraph is determined to be less than 0.50%, such rate shall be deemed to be 0.50% for the purposes of this Agreement.

Section 2.12 Yield Protection.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in, by any Lender (except any reserve requirement reflected in the Adjusted LIBO Rate);

(ii) subject the Administrative Agent or any Lender to any Tax of any kind whatsoever with respect to this Agreement, or any Loan made by it, or change the basis of taxation of payments to such Administrative Agent or Lender in respect thereof (in each case, except for (A) Indemnified Taxes or (B) Excluded Taxes); or

(iii) impose on the Administrative Agent or any Lender or the London interbank market any other condition, cost or expense (other than any Taxes) affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting or maintaining any Eurodollar Loan or any other Loan in the case of clause (ii) (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or any other amount), then, upon written request of the Administrative Agent or such Lender, as applicable, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines (in good faith, in its reasonable discretion) that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company, if any, would have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company, if any, with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company, if any, for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of the Administrative Agent or a Lender, as applicable, setting forth the amount or amounts necessary to compensate the Administrative Agent or such Lender or their respective holding companies, as the case may be, as specified in clause (a) or (b) of this Section 2.12, and setting forth in reasonable detail the calculation of the amount owed and the basis for the claim shall be delivered to the Borrower and shall be deemed presumptively correct absent manifest error. The Borrower shall pay the Administrative Agent or such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Administrative Agent, or any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of the Administrative Agent's or such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs incurred or reductions suffered more than 180 days prior to the date that the Administrative Agent or such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions pursuant to the certificate to be delivered in subsection (c) above and of the Administrative Agent or such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.13 Funding Losses.

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Eurodollar Loan on a day other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan (other than an ABR Loan) on the date or in the amount notified by the Borrower including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 2.13, each Lender shall be deemed to have funded each Eurodollar Loan made by it at the LIBO Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Loan was in fact so funded.

Section 2.14 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) Payments Generally. The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or of amounts payable under Sections 2.12, 2.13, 2.15 or 10.03, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time), on the date when due, in immediately available funds, free and clear of, and without condition or deduction for, recoupment or setoff, except for taxes required to be deducted under applicable law. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent to the applicable account designated to the Borrower by the Administrative Agent, except that payments pursuant to Sections 2.12, 2.13, 2.15 and 10.03 shall be made directly to the persons entitled thereto and payments pursuant to other Loan Documents shall be made to the persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Except as otherwise expressly provided herein, all payments under each Loan Document shall be made in U.S. dollars.

(b) Pro Rata Treatment.

(i) Other than as permitted by Section 2.16(b), Section 2.20, Section 2.21, Section 2.22, Section 10.02(e), Section 10.02(f) and Section 10.04, each payment by the Borrower of interest in respect of the Loans shall be applied to the amounts of such obligations owing to the Lenders *pro rata* according to the respective amounts then due and owing to the Lenders.

(ii) Other than as permitted by Section 2.20, Section 2.21, Section 2.22, Section 10.02 and Section 10.04, each payment by the Borrower on account of principal of the Loans shall be allocated among the Lenders *pro rata* based on the principal amount of the Loans held by the Lenders.

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) *second*, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties. It is understood that the foregoing does not apply to any adequate protection payments under any federal, state or foreign bankruptcy, insolvency, receivership or similar proceeding, and that the Administrative Agent may, subject to any applicable federal, state or foreign bankruptcy, insolvency, receivership or similar orders, distribute any adequate protection payments it receives on behalf of the Lenders to the Lenders in its sole discretion (i.e., whether to pay the earliest accrued interest, all accrued interest on a *pro rata* basis or otherwise).

(d) Sharing of Setoff. Subject to the terms of any Intercreditor Agreement, if any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other Obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; *provided* that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to any payment (x) made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (y) obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant other than to any Group Member (as to which the provisions of this Section 2.14 shall apply (unless obtained by such Group Member in accordance with of this Agreement)).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(d) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(d) to share in the benefits of the recovery of such secured claim.

(e) Borrower Default. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 10.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loans, to purchase its participation or to make its payment under Section 10.03(c).

Section 2.15 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Credit Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction, deduction or withholding for any Taxes ("**Tax Withholdings**") except as required by applicable Requirements of Law. If any Taxes are required by any applicable Requirements of Law to be withheld or deducted in respect of any such payments by any applicable Withholding Agent (as determined in the good faith discretion of an applicable Withholding Agent), then (i) in the case of Indemnified Taxes, the sum payable by the relevant Credit Party shall be increased as necessary so that after all such Tax Withholdings have been made (including deductions or withholdings applicable to additional sums payable under this Section 2.15), each Recipient receives an amount equal to the sum it would have received had no such Tax Withholdings been made (including such Tax Withholdings applicable to additional sums payable under this Section 2.15) (such additional sums being the "**Additional Amount**"), (ii) the applicable Withholding Agent shall make such Tax Withholdings, and (iii) the applicable Withholding Agent shall timely pay the full amount of the Tax Withholdings to the relevant Governmental Authority in accordance with the applicable Requirements of Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of clause (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower. Without duplication for any Additional Amounts or Other Taxes paid pursuant to Sections 2.15(a) or (b), the Credit Parties shall indemnify and hold harmless (on a joint and several basis) each Recipient, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) payable or paid by such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Credit Party pursuant to this Section 2.15 to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the Tax Return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders.

(i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and to the Administrative Agent, whenever reasonably requested by the Borrower or the Administrative Agent, such properly completed and duly executed documentation reasonably requested by the Borrower or the Administrative Agent, as the case may be, (x) to determine whether or not any payments made under any Loan Document are subject to Tax Withholdings or information reporting requirements and (y) to determine, if applicable, the required rate of Tax Withholdings. In addition, any Recipient, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Requirements of Law or reasonably requested by the Borrower or the Administrative Agent to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation and information (other than such documentation set forth in Section 2.15(e)(ii)(A)(1)-(4), Section 2.15(e)(ii)(B) and Section 2.15(e)(ii)(C) below) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Borrower:

(A) each Recipient that is a Foreign Lender, shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, properly completed and duly executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form), as applicable, claiming eligibility for benefits under the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form), as applicable, claiming eligibility under the "business profits" or "other income" article of such tax treaty,

(2) properly completed and duly executed copies of Internal Revenue Service Form W-8ECI (or any successor form), as applicable,

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit G to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) properly completed and duly executed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor form),

(4) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender granting a participation), properly completed and duly executed copies of Internal Revenue Service Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, U.S. Tax Compliance Certificate, Form W-9, and/or other certification documents from each beneficial owner, as applicable (*provided* that if the Foreign Lender is a partnership for U.S. federal income tax purposes (and not a participating Lender) and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, the U.S. Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such direct or indirect partners), or

(5) any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine any withholding or deduction required to be made;

(B) each Recipient that is not a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon reasonable request of the Borrower or the Administrative Agent) two properly completed and duly executed copies of Internal Revenue Service Form W-9 (or any successor or other applicable form) certifying that such Recipient is exempt from United States federal backup withholding;

(C) if a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount (if any) to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement;

(D) notwithstanding any other provision of this Section 2.15(e), a Recipient shall not be required to deliver any documentation or information that such Recipient is not legally eligible or entitled to deliver; and

(E) each such Recipient shall, from time to time after the initial delivery by such Recipient of any form or certificate, whenever a lapse in time or change in such Recipient's circumstances renders such form or certificate (including any specific form or certificate required in this Section 2.15(e)) so delivered obsolete, expired or inaccurate in any material respect, promptly (i) update such form or certificate or (ii) notify the Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(iii) On or before the date the Administrative Agent (or any successor or replacement Administrative Agent) becomes the Administrative Agent hereunder, it shall deliver to the Borrower two duly executed copies of either (i) Internal Revenue Service Form W-9 (or any successor forms) certifying that it is exempt from U.S. federal backup withholding tax or (ii) a U.S. branch withholding certificate on Internal Revenue Service Form W-8IMY (or any successor forms) evidencing its agreement with the Borrower to be treated as a U.S. Person (with respect to amounts received on account of any Lender Party) and Internal Revenue Service Form W-8ECI (or any successor forms) (with respect to amounts received on its own account), with the effect that, in either case, the Borrower will be entitled to make payments hereunder to the Administrative Agent without withholding or deduction on account of U.S. federal withholding Tax. The Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification.

(f) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified by the Credit Parties or on account of which the Credit Parties have paid Additional Amounts pursuant to this Section 2.15, it shall pay to the Credit Parties an amount equal to such refund (but only to the extent of indemnity payments made, or Additional Amounts paid, by the Credit Parties under this Section with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such party, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Credit Parties, upon the request of such party, agree to repay any such amount paid over to the Credit Parties to such party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (f), in no event will such party be required to pay any amount to the Credit Parties pursuant to this clause (f), the payment of which would place such party, as applicable, in a less favorable net after-Tax position than such party would have been in if the Tax subject to indemnification (or the payment of Additional Amounts) and giving rise to such refund had not been deducted, withheld or imposed and the indemnification payments (or Additional Amounts) with respect to such Tax had never been paid. Nothing herein contained shall interfere with the right of a Recipient to arrange its tax affairs in whatever manner it thinks fit nor obligate any Recipient to claim any Tax refund or to make available its Tax Returns or disclose any information relating to its Tax affairs or any computations in respect thereof or require any Recipient to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled. Unless required by Requirements of Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender, as the case may be.

(g) Survival. The obligations of the Credit Parties under this Section 2.15 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(h) Payments from Administrative Agent. For purposes of this Section 2.15, any payments by the Administrative Agent to a Lender of any amounts received by the Administrative Agent from any Credit Party on behalf of such Lender shall be treated as a payment from such Credit Party to such Lender.

Section 2.16 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.12, or requires the Borrower to pay any Additional Amount to any Lender or any Governmental Authority (other than with respect to Other Taxes) for the account of any Lender pursuant to Section 2.15, then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates or to file any certificate or document reasonably required by the Borrower, if, in the reasonable judgment of such Lender, such designation or assignment or filing (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth in reasonable detail the calculation of such costs and expenses submitted by such Lender to the Borrower shall be deemed presumptively correct absent manifest error.

(b) Replacement of Lenders. If (i) any Lender or the Administrative Agent requests compensation under Section 2.12, or (ii) the Borrower is required to pay any Additional Amount to any Lender or the Administrative Agent or any Governmental Authority (other than with respect to Other Taxes) for the account of any Lender or the Administrative Agent pursuant to Section 2.15, and such Lender or the Administrative Agent declined or is unable to designate a different lending office in accordance with Section 2.16(a), then the Borrower may, at its sole expense and effort and option, upon notice to any applicable Lender and the Administrative Agent, (A) require any such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.04), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.12 or Section 2.15 arising with respect to any period prior to such assignment) and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), (B) pay off in full all of the Loans and any other Obligations owed to any such Lender, (C) if applicable, terminate any such Lender's Commitments and/or (D) if applicable, upon at least ten (10) days prior notice, require the Administrative Agent to resign in accordance with Section 9.06; *provided* that:

(i) in the case of clause (A), unless waived by the Administrative Agent, the Borrower shall have paid to the Administrative Agent the processing and recordation fee specified in Section 10.04(b), if any,

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts (including any amount pursuant to Section 2.10(k)) payable to it hereunder and under the other Loan Documents (including any amounts under Sections 2.12, 2.13 and 2.15, assuming for this purpose (in the case of a Lender being replaced as the result of a claim or payment under Sections 2.12 or 2.15) that the Loans of such Lender were being prepaid) from the assignee or the Borrower;

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) in the case of clause (A), such assignment does not conflict with applicable Requirements of Law.

Each Lender agrees that, if the Borrower elects to replace such Lender in accordance with this Section 2.16(b), it shall promptly execute and deliver to the Administrative Agent an Assignment and Assumption to evidence the assignment and shall deliver to the Administrative Agent any Note (if Notes have been issued in respect of such Lender's Loans) subject to such Assignment and Assumption; *provided* that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be in full force and effect and shall be recorded in the Register. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.17 [Reserved].

Section 2.18 [Reserved].

Section 2.19 [Reserved].

Section 2.20 Increase in Commitments.

(a) Borrower Request. The Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more new Commitments under a new term facility or under the existing term facility or any increase under an existing tranche of Loans (each, an "**Incremental Loan Commitment**" or an "**Incremental Facility**"), in each case, under the Loan Documents, in an aggregate amount not to exceed the Maximum Incremental Facilities Amount (the date of establishment of any such Incremental Facility, an "**Increase Effective Date**"). The opportunity to commit to provide all or a portion of the Incremental Facilities shall be offered by the Borrower first to the existing Lenders on a pro rata basis (and on a non-pro rata basis, pursuant to terms acceptable to the Administrative Agent, with respect to existing Lenders that elect to cover declining Lenders' declined amounts) on the terms offered by the Borrower and such other Lenders and, to the extent that such existing Lenders have not agreed to provide such Incremental Facilities within ten (10) Business Days after receiving such offer from the Borrower or the Administrative Agent, after being provided a bona fide opportunity to do so, the Borrower may then offer such opportunity (on terms no less favorable to the Borrower) to any other Eligible Assignees (which may include existing Lenders). Any existing Lender approached to provide all or a portion of such Incremental Loan Commitments may elect or decline, in its sole discretion, to provide such Incremental Loan Commitment and, to the extent any such Incremental Loan Commitments are not provided by existing Lenders, each Lender providing such commitment shall constitute an Eligible Assignee hereunder; *provided* that the Administrative Agent shall have consented (which consent shall not be unreasonably withheld, delayed or conditioned) to any such Eligible Assignee providing all or a portion of such Incremental Loan Commitment, if and to the extent such consent would be required under Section 10.04 for an assignment of such type of Loans or Commitments, as applicable, to such Eligible Assignee.

(b) Conditions. Such Incremental Loan Commitments shall become effective, as of such Increase Effective Date; *provided* that:

(i) Immediately after giving effect to the funding of such Incremental Facility, no Event of Default would exist; provided, that, with respect to any Incremental Facilities incurred in connection with a Limited Condition Acquisition, the foregoing condition may be limited by the Lenders providing such Incremental Facility to (x) on the LCA Test Date, immediately after giving effect to the funding of such Incremental Facility, no Event of Default would exist and (y) on the date of funding of such Incremental Facility, no Event of Default under Section 8.01(a), (b), (g) or (h) would exist immediately after giving effect to the funding of such Incremental Facility; *provided* that any Limited Condition Acquisition remains subject to the terms of Section 1.06 hereof;

(ii) the proceeds of the Incremental Loans shall be used in accordance with Section 3.11 and Section 5.08;

(iii) the Borrower shall deliver or cause to be delivered any customary amendments to the Loan Documents or other documents reasonably requested by the Administrative Agent or any Incremental Lender in connection with any such transaction;

(iv) any such Incremental Loans shall be in an aggregate amount of at least $500,000 and integral multiples of $100,000 above such amount (except, in each case, such minimum amount and integral multiples amount shall not apply when the Borrower uses all of the Incremental Loan Commitments available at such time);

(v) any Incremental Facilities shall be secured on a *pari passu* basis with the Loans, shall not be secured by a Lien on any assets of the Borrower or any Guarantor not constituting Collateral and shall not be guaranteed by any person other than the Guarantors; and

(vi) subject to customary "SunGard" limitations (to the extent agreed to by the Lenders providing the applicable Incremental Facility and the extent the proceeds of the applicable Incremental Facility are being used to finance a Limited Condition Acquisition), each of the representations and warranties made by any Credit Party set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (or in all respects if such representation or warranty contains any materiality qualifier, including references to "material," "Material Adverse Effect" or dollar thresholds) both before and after giving effect to such Incremental Facility (or if incurred in connection with a Limited Condition Acquisition on the LCA Test Date) with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (or in all respects if such representation or warranty contains any materiality qualifier, including references to "material," "Material Adverse Effect" or dollar thresholds) as of such earlier date.

(c) Terms of New Loans and Commitments. The terms and provisions of Loans made pursuant to such Incremental Loan Commitments shall be subject to Section 2.20(d) and as follows:

(i) the terms and provisions of Loans made pursuant to Incremental Loan Commitments ("**Incremental Loans**") shall be, except as otherwise set forth herein (including Section 2.20(d)), on terms and pursuant to documentation to be determined by the Borrower and the lenders providing such Incremental Loans; *provided* that, such terms (but excluding any terms applicable only after the applicable Maturity Date applicable to Loans made on the Closing Date) and documentation (other than as set forth herein (including Section 2.20(d))) shall be consistent with the Loans; *provided further* that, it is understood that no consent shall be required from the Administrative Agent or any Lender for terms or conditions that are more restrictive than the terms and provisions of the Loans existing on the Increase Effective Date of any Incremental Facility if such terms or conditions are incorporated into existing Loans for the benefit of all existing Lenders, which may be done without further amendment requirements, including, for the avoidance of doubt, at the option of the Borrower, any increase in the applicable interest rate margin or amount of amortization relating to the existing Loans to bring such applicable interest rate margin or amount of amortization in line with such Incremental Facility to achieve fungibility with such existing Loans; *provided further* that (x) this Section 2.20(c)(i) shall supersede any provisions in Section 10.02 to the contrary and (y) except as expressly stated in this Section 2.20 (which are in all respects subject to the Limited Condition Acquisition provisions), the documentation will not include any financial test with respect to the incurrence of any Incremental Facilities;

(ii) the maturity date of any Incremental Loans shall be no earlier than the Latest Maturity Date applicable to the Loans made on the Closing Date and such Incremental Loans shall have no scheduled amortization or scheduled payments of principal prior to the Latest Maturity Date of the Loans made on the Closing Date; and

(iii) each Incremental Facility shall rank pari passu in right of payment with the Loans, shall participate on a pro rata basis or less than pro rata basis in any voluntary prepayment of Loans hereunder, and shall share ratably (or on a lesser basis) with respect to any mandatory prepayments of Loans hereunder (other than mandatory prepayments resulting from a refinancing of any facility which may be applied exclusively to the facility being refinanced).

(d) Yield. If the initial Yield (as defined below) on any Incremental Loans exceeds the then applicable Yield on the Loans existing on the Increase Effective Date by more than 50 basis points, then the interest rate margins then in effect for each applicable existing tranche of Loans shall be increased to the extent necessary so that the Yield on the existing Loans is 50 basis points less than the Yield on such Incremental Facility. "**Yield**" shall mean, shall mean the yield of such indebtedness, whether in the form of interest rate, margin, OID, upfront fees, index floors or otherwise, in each case payable by the Borrower generally to lenders, provided that OID and upfront fees shall be equated to interest rate assuming a four year life to maturity, and shall not include arrangement fees, structuring fees, ticking fees, commitment fees, unused line fees, underwriting fees and any amendment and similar fees that are not paid generally to the lenders.

(e) Equal and Ratable Benefit. The Loans and Commitments established pursuant to this Section 2.20 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guarantees and security interests created by the Security Documents. The Borrower and the other Credit Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Security Documents continue to be perfected under the UCC or otherwise after giving effect to the establishment of any such Incremental Loans or any such Incremental Loan Commitments.

Section 2.21 Extension Amendments.

(a) The Borrower may at any time and from time to time request that all or a portion, including one or more Tranches, of the Loans (including any Extended Loans), in each case existing at the time of such request (each such Tranche of existing Loans, an "**Existing Tranche**" and the Loans of any such Tranche, the "**Existing Loans**") be converted to extend the termination date thereof and the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any such Existing Tranche (any such Existing Tranche or portion thereof which has been so extended, an "**Extended Tranche**" and the Loans of such Tranche or portion thereof, the "**Extended Loans**") and to provide for other terms consistent with this Section 2.21; provided that any such request shall be made by the Borrower to certain Lenders specified by the Borrower with Loans with a like maturity date (whether under one or more Tranches) on a pro rata basis (based on the aggregate outstanding principal amount of Loans); it being understood that each Lender under the applicable Tranche or Tranches that are being requested to extend shall have the opportunity to participate in such extension on the same terms and conditions as each other Lender in such Tranche or Tranches. In order to establish any Extended Tranche, the Borrower shall provide a written notice to the Administrative Agent (who shall provide a copy of such notice to each of the requested Lenders of the applicable Existing Tranche) (an "**Extension Request**") setting forth the proposed terms and conditions of the Extended Tranche to be established, which terms and conditions (subject to the proviso at the end of this Section 2.21(a), excluding pricing, interest rate margins, rate floors, discounts, fees, premiums and prepayment or redemption terms and provisions which shall be determined by the Borrower and the Lenders thereunder) shall be substantially identical to the terms and conditions of the Existing Tranche from which they are to be extended (the "**Specified Existing Tranche**"), or (when taken as a whole) less favorable to the Lenders providing such Extended Loans (as determined by the Borrower in good faith) (except for covenants or other provisions (x) applicable only to periods after the applicable Latest Maturity Date of the Existing Loans, or (y) that are added to this Agreement for the benefit of the Lenders hereunder (which may be accomplished without further amendment requirements)); *provided* that, notwithstanding anything to the contrary in this Section 2.21 or otherwise, (1) such Extended Tranche shall not be in an amount less than $5,000,000 and integral multiples of $1,000,000 above such amount, (2) to the extent secured, no Extended Tranche shall be secured by or receive the benefit of any collateral, credit support or security that does not secure or support the Existing Tranches, (3) the mandatory prepayment or the commitment reduction of any of Loans or Commitments under the Extended Tranches shall be made on a *pro rata* basis with all other outstanding Loans or Commitments respectively; *provided* that Extended Loans may, if the Extending Lenders making such Extended Loans so agree, participate on a less than *pro rata* basis in any mandatory prepayment or commitment reductions hereunder, (4) the final maturity of any Extended Tranche shall not be earlier than, and shall not have a Weighted Average Life to Maturity shorter than, the applicable Specified Existing Tranche, (5) each Lender in the Specified Existing Tranche shall be permitted to participate in the Extended Tranche on the same terms and conditions as each other Lender in accordance with its *pro rata* share of the Specified Existing Tranche, (6) assignments and participations of Extended Tranches shall be governed by the same assignment and participation provisions applicable to Loans and Commitments hereunder as set forth in Section 10.04, (7) no Event of Default would exist immediately after giving effect to the funding of such Extended Loans and (8) no extension shall be permitted pursuant to this Section 2.21 unless Lenders holding not less than a majority of the principal amount of such Loans to be extended consent to such extension. No requested Lender shall have any obligation to agree to have any of its Existing Loans or, if applicable, commitments of any Existing Tranche converted into an Extended Tranche pursuant to any Extension Request. Any Extended Tranche shall constitute a separate Tranche of Loans (and, if applicable, commitments) from the Specified Existing Tranches, from any other Existing Tranches, and from any other Extended Tranches so established on such date.

(b) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days (or such shorter period as may be agreed by the Administrative Agent in its sole discretion) prior to the date on which Lenders under the applicable Existing Tranche or Existing Tranches are requested to respond, and shall agree to such procedures (including regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after giving effect to such Extension Request), if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.21. Any Lender (an "**Extending Lender**") wishing to have all or a portion of its Specified Existing Tranche converted into an Extended Tranche shall notify the Administrative Agent (an "**Extension Election**") on or prior to the date specified in such Extension Request of the amount of its Specified Existing Tranche that it elects to convert into an Extended Tranche. In the event that the aggregate amount of the Specified Existing Tranche subject to Extension Elections exceeds the amount of Extended Tranches requested pursuant to the Extension Request, the Specified Existing Tranches subject to Extension Elections shall be converted to Extended Tranches on a *pro rata* basis based on the amount of Specified Existing Tranches included in each such Extension Election.

(c) Extended Tranches shall be established pursuant to an amendment (an "**Extension Amendment**") to this Agreement (which may include amendments to provisions related to maturity, interest margins, fees or prepayments and which, except to the extent expressly contemplated by the penultimate sentence of this Section 2.21(c) and notwithstanding anything to the contrary set forth in Section 10.02 (but subject to clause (8) of the second proviso in Section 2.21(a)), shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Tranches established thereby) executed by the Credit Parties, the Administrative Agent, and the Extending Lenders. It is understood and agreed that each Lender has consented for all purposes requiring its consent, and shall at the effective time thereof be deemed to consent to each amendment to this Agreement and the other Loan Documents authorized by this Section 2.21 and the arrangements described above in connection therewith. This Section 2.21(c) shall supersede any provisions in Section 10.02 to the contrary.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an "**Extension Date**"), in the case of the Specified Existing Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of such Specified Existing Tranche so converted by such Lender into an Extended Tranche or Extended Tranches on such date, and such Extended Tranche or Extended Tranches shall be established as a separate Tranche or Tranches from the Specified Existing Tranche and from any other Existing Tranches and any other Extended Tranches so established on such date.

(e) If (subject to clause (8) of the second proviso in Section 2.21(a)), in connection with any proposed Extension Amendment, any Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such Lender, a "**Non-Extending Lender**") then the Borrower may, on notice to the Administrative Agent and the Non-Extending Lender, (A) replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Section 10.04 (with the assignment fee, if any, and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; *provided* that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to obtain a replacement Lender; *provided*, *further*, that the applicable assignee shall have agreed to provide Loans and/or a commitment on the terms set forth in such Extension Amendment; and *provided, further*, that all Obligations (other than contingent indemnity obligations and unasserted expense reimbursement obligations) of the Borrower owing to the Non-Extending Lender relating to the Loans and participations so assigned shall be paid in full at par to such Non-Extending Lender concurrently with such Assignment and Assumption by the assignee Lender or the Borrower or (B) prepay the Loans and, at the Borrower's option, if applicable, terminate the Commitments of such Non-Extending Lender, in whole or in part, subject to breakage costs, without premium or penalty. In connection with any such replacement under this Section 2.21, if the Non-Extending Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and (b) the date as of which all Obligations (other than contingent indemnity obligations and unasserted expense reimbursement obligations) of the Borrower owing to the Non-Extending Lender relating to the Loans and participations so assigned shall be paid in full in cash to such Non-Extending Lender by the assignee Lender or the Borrower, then such Non-Extending Lender shall be deemed to have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Non-Extending Lender. This Section 2.21(e) shall supersede any provisions in Section 10.02 to the contrary.

Section 2.22 Refinancing Facilities.

(a) At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender, Credit Agreement Refinancing Indebtedness in respect of all or any portion of the Loans then outstanding under this Agreement (which will be deemed to include any then outstanding Incremental Loans then outstanding under this Agreement) or any then outstanding Refinancing Loans, in each case, pursuant to a Refinancing Amendment, together with any applicable Intercreditor Agreement or other subordination agreement that is reasonably acceptable to the Administrative Agent; *provided* that such Credit Agreement Refinancing Indebtedness (i) will rank *pari passu* in right of payment and of security (to the extent secured) with the other Loans and Commitments hereunder, (ii) will, to the extent permitted by the definition of "Credit Agreement Refinancing Indebtedness," have such pricing, interest rate margins, rate floors, discounts, fees, premiums and prepayment or redemption provisions and terms as may be agreed by the Borrower and the Lenders or Additional Lenders with respect thereto and (iii) no Event of Default would exist immediately after giving effect to the funding of such Credit Agreement Refinancing Indebtedness. The effectiveness of any Refinancing Amendment shall be subject to, to the extent reasonably requested by the Administrative Agent, receipt by the Administrative Agent of board resolutions, officers' certificates and/or reaffirmation agreements consistent with those delivered on the Closing Date. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto (including any amendments necessary to treat the Loans and Commitments subject thereto as Refinancing Loans or Refinancing Commitments, as applicable) and any Indebtedness being replaced or refinanced with such Credit Agreement Refinancing Indebtedness shall be deemed permanently reduced and satisfied in all respects. Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section. For the avoidance of doubt, no Credit Agreement Refinancing Indebtedness can be used to prepay or repay any Loans made on the Closing Date without the Applicable Prepayment Premium due thereon, if any.

(b) This Section 2.22 shall supersede any provisions in Section 10.02 to the contrary.

Section 2.23 Tax Treatment. The Borrower and the Lenders agree (i) that the Loans are debt for U.S. federal income Tax purposes, (ii) that the Loans are not governed by the rules set out in Treasury Regulations Section 1.1275-4, and (iii) not to file any tax return, report or declaration inconsistent with the foregoing, except as otherwise required due to a determination within the meaning of Section 1313(a) of the Code. The inclusion of this Section 2.23 is not an admission by any Lender that it is subject to United States taxation.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Credit Party (including on behalf of its Restricted Subsidiaries, unless otherwise indicated) represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders on each date set forth in Section 4.01 that:

Section 3.01 Organization; Powers. Each Credit Party (a) is duly incorporated, formed or organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to enter into this Agreement and the other Loan Documents and perform its obligations thereunder in each case and to carry on its business as now conducted and to own and lease its property, in each case except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The Loan Documents to be entered into by each Credit Party are within such Credit Party's powers and have been duly authorized by all necessary action on the part of such Credit Party. This Agreement has been duly executed and delivered by each Credit Party and constitutes, and each other Loan Document to which any Credit Party is to be a party, when executed and delivered by such Credit Party, will constitute, a legal, valid and binding obligation of such Credit Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 No Conflicts. Except as set forth on Schedule 3.03, the execution, delivery and performance by the Credit Parties of the Loan Documents to which they are a party and the Credit Extensions contemplated by the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Loan Documents and (iii) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate or require consent not obtained under the Organizational Documents of any Group Member, and (c) will not violate any Requirements of Law except, individually or in the aggregate, where it would not reasonably be expected to result in a Material Adverse Effect.

Section 3.04 Financial Statements; Projections.

(a) Historical Financial Statements; Pro Forma Balance Sheet. On the Closing Date, the Borrower shall have delivered to the Administrative Agent and made available to the Lenders (i) the Historical Financial Statements and (ii) a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Borrower and its Restricted Subsidiaries as of and for the twelve-month period ending on December 31, 2020, prepared after giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income) (the "**Pro Forma Balance Sheet**"). The financial statements in the immediately preceding sentence (other than the Pro Forma Balance Sheet) have been prepared in accordance with GAAP and present fairly in all material respects the financial condition and the results of operations and cash flows of the applicable entities to which they relate as of the dates and for the periods to which they relate. The Pro Forma Balance Sheet has been prepared (1) in good faith, based on assumptions believed by the Borrower to be reasonable and information reasonably available to, or in the possession or control of, the Credit Parties, in each case, as of the date of delivery thereof, and presents fairly in all material respects on a pro forma basis the estimated financial position of the Borrower and its Restricted Subsidiaries as at the last day of and for the twelve month period ending December 31, 2020 and their estimated results of operations for the periods covered thereby, assuming that the Transactions had actually occurred at such date or at the beginning of the periods covered thereby and (2) in a manner consistently applied throughout the applicable period covered thereby. All financial statements delivered pursuant to Section 5.01(a) and Section 5.01(b) have been prepared in accordance with GAAP and present fairly in all material respects the financial condition and results of operations and cash flows of the Borrower and its consolidated Restricted Subsidiaries as of the dates and for the periods to which they relate, except as indicated in any notes thereto and, in the case of any such unaudited financial statements, the absence of footnote disclosures and audit adjustments.

(b) Absence of Material Adverse Effect. Since the Closing Date, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or would reasonably be expected to result in a Material Adverse Effect.

(c) Pro Forma Financial Statements. The financial projections on a pro forma basis most recently delivered by the Borrower pursuant to Section 5.01(d) (A) have been prepared in good faith by the Credit Parties, based upon (i) the assumptions stated therein (which assumptions are believed by the Credit Parties on the Closing Date to be reasonable), (ii) accounting principles consistent with the historical audited financial statements delivered pursuant to Section 3.04(a) and (iii) the information reasonably available to, or in the possession or control of, the Credit Parties as of the date of delivery thereof, (B) reflect in all material respects, all adjustments required to be made to give effect to the Transactions, (C) have been prepared in a manner consistently applied throughout the applicable period covered thereby, and (D) present fairly, in all material respects, the consolidated financial position and results of operations of the Credit Parties described therein as of such date and for such periods set forth therein, on a pro forma basis assuming that the Transactions had occurred at such dates (it being understood and agreed that (x) any financial or business projections or forecasts furnished are predictions as to future events and not to be viewed as facts or a guarantee of performance and are subject to significant uncertainties and contingencies, which may be beyond the control of any Credit Party, (y) no assurance is given by any Credit Party that any particular financial projections will be realized and (z) the actual results during the period or periods covered by any such projections or forecasts may differ from the projected or forecasted results and such differences may be material).

(d) Restatements. Each Lender and the Administrative Agent hereby acknowledge and agree that the Borrower and its Subsidiaries may be required to restate historical financial statements as the result of the implementation of changes in GAAP or the interpretation thereof or purchase accounting adjustments and that such restatements on their own will not result in a Default or Event of Default under the Loan Documents.

Section 3.05 Properties.

(a) Title. Each Group Member (i) has good title to, or valid leasehold interests in, all of its Property (other than Intellectual Property, which is subject to Section 3.06 and not this Section 3.05) material to its business, except to the extent of any irregularities or deficiencies that would not be reasonably expected to, result in a Material Adverse Effect, and (ii) owns its Collateral and any Material Property, if any, in each case, free and clear of all Liens except for Permitted Liens and any Liens and privileges arising mandatorily by Law.

(b) Collateral. Each Credit Party owns or has rights to use all of the Collateral (other than Intellectual Property which is subject to Section 3.06) and all rights with respect to any of the foregoing, except, in each case, as could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.06 Intellectual Property.

(a) Ownership; No Claims. Except as set forth on Schedule 3.06, (i) each Credit Party owns, or is authorized to use, all Intellectual Property material to the conduct of its business as currently conducted, except to the extent such failure to own, or be authorized to use, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (ii) to the knowledge of each Credit Party, the operation of such Group Member's business and the use of Intellectual Property owned by such Group Member or licensed by such Group Member do not infringe, misappropriate, dilute or otherwise violate the Intellectual Property rights of any person, except to the extent such violations, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (iii) no claim or litigation regarding any Intellectual Property owned by a Group Member is pending or, to the knowledge of any Credit Party, threatened in writing against any Credit Party or Subsidiary, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (iv) the Borrower has taken (and caused its Restricted Subsidiaries to take) commercially reasonable steps to maintain, enforce and protect the owned material Intellectual Property of the Credit Parties or Restricted Subsidiaries and (v) to the knowledge of each Credit Party, no Group Member is in material breach of, or in material default under, any license of Intellectual Property to such Credit Party that is material to the operation of the business of such Group Member except to the extent that such violations would not reasonably be expected to have a Material Adverse Effect.

(b) No Violations. Except as set forth on Schedule 3.06, (i) to the knowledge of each Credit Party, there is no violation, misappropriation, dilution or infringement by others of any right of any Group Member with respect to any Intellectual Property that is owned by any Group Member which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (ii) each Group Member has used commercially reasonable efforts to ensure that Company Proprietary Software(1) is free from any trojan horse, virus or similar malicious code or program that can cause material damage to computer systems using such Company Proprietary Software , (2) functions and operates in all material respects for its intended purpose, (3) employs reasonable safeguards to protect against security threats, and (4) to the extent such Company Proprietary Software includes or relies upon open source software components, complies with the requirements of all applicable open source licenses, in each case, except to the extent such violations, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 3.07 Equity Interests and Restricted Subsidiaries. As of the Closing Date, after giving effect to the Transactions, neither the Borrower nor any other Credit Party has any Subsidiaries other than those specifically disclosed on Schedule 3.07 and all of the outstanding Equity Interests in the Borrower and its Subsidiaries have been validly issued, are fully paid and nonassessable (other than Equity Interests consisting of limited liability company interests or partnership interests which, pursuant to the relevant organizational or formation documents, cannot be fully paid and nonassessable and to the extent such concepts are not applicable in the relevant jurisdiction). All Equity Interests owned directly or indirectly by the Borrower or any other Credit Party (other than any such Equity Interests owned directly or indirectly by any Unrestricted Subsidiary) are owned free and clear of all Liens except (i) those created under the Security Documents, and (ii) those Liens permitted under Section 6.02. As of the Closing Date, Schedule 3.07 sets forth (a) the name and jurisdiction of organization or incorporation of the Borrower and each Subsidiary, and (b) the ownership interest of the Borrower and any of its Subsidiaries in such Subsidiaries, including the percentage of such ownership by class (if applicable).

Section 3.08 Litigation. Except as set forth on Schedule 3.08, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of the Borrower, threatened in writing against or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any Restricted Subsidiary or against any of their properties or revenues that either individually or in the aggregate, could reasonably be expected, if adversely determined, to have a Material Adverse Effect.

Section 3.09 Federal Reserve Regulations. No Credit Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock. No part of the proceeds of any Loan will be used for any purpose that violates Regulation T, U or X.

Section 3.10 Investment Company Act. No Credit Party is an "investment company" under the Investment Company Act of 1940, as amended.

Section 3.11 Use of Proceeds. The Borrower will (or will direct a Credit Party to) use the proceeds of the Loans on the Closing Date to finance (i) a portion of the consideration for the Closing Date Acquisition, (ii) the payment of related fees, costs and expenses and other transaction costs incurred in connection with the Transactions (including without limitation upfront fees and original issue discount) and (iii) finance the Closing Date Refinancing. Proceeds of the Incremental Facilities may be used for working capital and general corporate purposes, including, without limitation, to finance Permitted Acquisitions and other permitted Investments and to pay related fees, costs and expenses in connection with any such transactions (but excluding Dividends and Restricted Debt Payments).

Section 3.12 Taxes. Each Group Member has (a) timely filed or caused to be timely filed (after giving effect to any applicable extensions) all material Tax Returns required to have been filed by it, (b) duly and timely paid or remitted or caused to be duly and timely paid or remitted all Taxes due and payable or remittable by it and all assessments received by it, except (i) Taxes that are being contested in good faith by appropriate proceedings and for which such Group Member has set aside on its books adequate reserves in accordance with GAAP, or (ii) Taxes which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, and (c) satisfied all of its withholding Tax obligations, except for failures that would not be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect or Taxes that are being contested in good faith by appropriate proceedings and for which such Group Member has set aside on its books adequate reserves in accordance with GAAP. Each Group Member has made adequate provision in accordance with GAAP for all material Taxes not yet due and payable. Each Group Member is unaware of any proposed or pending Tax assessments, deficiencies or audits that would be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect. To the knowledge of each Group Company, no Tax Lien (other than a Permitted Lien) has been filed with respect to any material Taxes

Section 3.13 No Material Misstatements.

(a) As of the Closing Date, no written information, report, financial statement, certificate, Borrowing Request, exhibit or schedule (in each case other than forecasts, projections and other forward looking statements (collectively, "**Projections**") and information of a general economic or industry nature) furnished by or on behalf of any Group Member to the Administrative Agent or any Lender in connection with any Loan Document or included therein or delivered pursuant thereto, taken as a whole and when furnished, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not materially misleading when taken as a whole as of the date such information, report, financial statement, certificate, Borrowing Request, exhibit or schedule is dated or certified; provided that, with respect to any Projections delivered pursuant to the terms hereof, each Group Member represents only that on the date of delivery thereof it acted in good faith and utilized assumptions believed by it to be reasonable when made in light of the then current circumstances (it being understood that Projections are predictions as to future events and are not to be viewed as facts and are subject to significant uncertainties and contingencies, which are beyond the control of the Borrower and its Restricted Subsidiaries, that no assurance or guarantee can be given that any Projections will be realized, that actual results may differ and that such differences may be material).

Section 3.14 Labor Matters. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, (i) there are no strikes, lockouts, or slowdowns against any Group Member pending or, to the knowledge of any Credit Party, threatened in writing, and (ii) the consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Group Member is bound. The hours worked by and payments made to employees of any Group Member have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable federal, state, local or foreign law dealing with such matters in any manner which would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect. All payments due from any Group Member, or for which any claim may be made against any Group Member, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Group Member except where the failure to do so would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 3.15 Solvency. On the Closing Date, after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 3.16 Employee Benefit Plans.

With respect to each Employee Benefit Plan, each Group Member is in compliance in all respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder, and each Employee Benefit Plan is in compliance, except, in each case, as would not reasonably be expected to result in a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other ERISA Events, would reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for financial reporting purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the property of all such underfunded Plans by an amount that would reasonably be expected to result in a Material Adverse Effect. Using actuarial assumptions and computation methods consistent with Section 4211 of ERISA, the aggregate liabilities of each Group Member or its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, would not reasonably be expected to result in a Material Adverse Effect. As of the date hereof, no Group Member has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA), or is in "endangered status" or in "critical status" (each within the meaning of Section 432 of the Code) and no such Multiemployer Plan is reasonably expected by any Group Member to be insolvent, except, in each case, as would not reasonably be expected to result in a Material Adverse Effect.

Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each Foreign Plan has been maintained in compliance with its terms and with the requirements of any and all applicable Requirements of Law and has been maintained, where required, in good standing with applicable regulatory authorities and (ii) no Group Member has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan. The present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan which is funded, determined as of the end of the most recently ended fiscal year of the respective Group Member on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan by an amount that would reasonably be expected to result in a Material Adverse Effect, and for each Foreign Plan which is not funded, the obligations of such Foreign Plan are properly accrued in accordance with GAAP in all material respects.

Section 3.17 Environmental Matters.

(a) Except as, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect:

(i) The Group Members and their businesses, operations and Real Property are in compliance with Environmental Law;

(ii) The Group Members have obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of their Real Property;

(iii) There has been no Release or threatened Release of Hazardous Material caused by the Group Members, or to the knowledge of the Group Members by any other Person, on, at, under or from any Real Property presently, or to the knowledge of the Group Members, formerly owned, leased or operated by the Group Members;

(iv) There is no Environmental Claim pending or, to the knowledge of the Group Members, threatened against the Group Members, and to the knowledge of the Group Members, there are no facts or circumstances that would reasonably be expected to give rise to any such Environmental Claim; and

(v) No Lien has been recorded or, to the knowledge of any Group Member, threatened under any Environmental Law with respect to any Real Property currently owned, operated or leased by the Group Members.

(b) This Section 3.17 contains the sole and exclusive representations and warranties of the Group Members with respect to any matters arising under Environmental Laws or relating to Environmental Claims or Hazardous Materials.

Section 3.18 Security Documents.

(a) Valid Liens. Subject to Section 4.01(k), each Security Document delivered pursuant to Article IV, Section 5.10, and Section 5.11 will, upon execution and delivery thereof, be effective to create (to the extent described therein and subject to other perfection requirements specifically set out in the Security Documents) in favor of the Collateral Agent, for its benefit and the benefit of the other Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Credit Parties' right, title and interest in and to the Collateral thereunder under applicable Requirements of Law (to the extent required hereunder and thereunder), except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity and capital maintenance rules and (i) when appropriate filings or recordings are made in the appropriate offices as may be required under applicable Requirements of Law (to the extent required hereunder and thereunder), and (ii) upon the taking of possession, control or other action by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession, control or other action (which possession, control or other action shall be given to the Collateral Agent or taken by the Collateral Agent to the extent required by any Security Document or this Agreement), the Liens in favor of Collateral Agent will, to the extent required by the Loan Documents (including the Security Documents), constitute fully perfected Liens on, and security interests in, all right, title and interest of the Credit Parties in such Collateral, in each case under applicable Requirements of Law (to the extent required hereunder and thereunder), subject to no Liens other than the applicable Permitted Liens.

(b) Foreign Law Limitations. Notwithstanding anything to the contrary, compliance with applicable foreign law with respect to the grant, creation and perfection of Liens on and security interests in the Collateral will not be required herein or under any other Security Document.

Section 3.19 Anti-Terrorism Law. No Credit Party and none of its Subsidiaries is in violation of any applicable Requirements of Law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224, effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, signed into law October 26, 2001 (the "**Patriot Act**"). The use of proceeds of the Loans will not violate the Trading With the Enemy Act (50 U.S.C. §§ 1-44, as amended) or any applicable foreign asset control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V). As of the Closing Date, to the knowledge of the Borrower, the information included in the Beneficial Ownership Certification is true and correct in all material respects.

Section 3.20 OFAC. None of the Borrower, any Subsidiary nor, to the knowledge of the Borrower, any director, officer, employee, or agent of the Borrower or any Restricted Subsidiary is (x) the subject or target of any applicable U.S. sanctions administered by OFAC or the U.S. Department of State or any applicable similar laws or regulations enacted by the European Union or the United Kingdom (collectively, "**Sanctions**") or (y) is located, organized or resident in a country or territory that is subject of comprehensive Sanctions (including, without limitation, Cuba, Iran, North Korea and Syria). The Borrower shall not use the proceeds of the Loans, directly or, to the Borrower's knowledge, indirectly, or otherwise make available such proceeds to any Person, for the purpose of financing activities of or with (i) any Person that is the subject or target of any applicable Sanctions, or (ii) in any country that, at the time of such financing is the subject or target of any country- or territory-wide Sanctions, or (iii) in any other manner that would result in a violation of applicable Sanctions by any Person that is a party to this Agreement, except, in the case of clauses (i), (ii), and (iii), to the extent licensed by OFAC or otherwise authorized under U.S. law or, if applicable, to the extent licensed or authorized under any similar laws or regulations enacted by the European Union or the United Kingdom.

Section 3.21 Foreign Corrupt Practices Act. No part of the proceeds of the Loans will be used directly or, to the Borrower's knowledge, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or any other Person acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any similar Requirements of Law.

Section 3.22 Compliance with Law. Each of the Borrower and each Restricted Subsidiary is in compliance with all Requirements of Law and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such Requirements of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 3.23 No Defaults. On the Closing Date, no Default or Event of Default has occurred and is continuing.

ARTICLE IV
CONDITIONS

Section 4.01 Conditions to Initial Credit Extension. The obligation of each Lender to fund the initial Credit Extension on the Closing Date requested to be made by the Borrower shall be subject to the prior or concurrent satisfaction or waiver of only the conditions precedent set forth in this Section 4.01 (the making of such initial Credit Extension by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent):

(a) Loan Documents. There shall have been delivered to the Administrative Agent from each Credit Party an executed counterpart of each of the Loan Documents to which it is a party to be entered into on the Closing Date.

(b) Corporate Documents. The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary (or equivalent officer) on behalf of each Credit Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Credit Party and, with respect to the articles or certificate of incorporation or organization (or similar document) certified (to the extent applicable) as of a recent date by the Secretary of State (or other applicable Governmental Authority) of the state of its organization, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors or equityholders, as applicable, of such Credit Party authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of the Borrower, the Borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the date of such certificate, and (C) as to the incumbency and specimen signature of each officer or authorized person executing any Loan Document or any other document delivered in connection herewith on behalf of such Credit Party (together with a certificate of another officer or authorized person as to the incumbency and specimen signature of the officer or authorized person executing the certificate in this clause (i));

(ii) to the extent available, a certificate as to the good standing of each Credit Party as of a recent date, from such Secretary of State (or other applicable Governmental Authority) of its jurisdiction of organization; and

(iii) the Administrative Agent shall have received a certificate dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions precedent set forth in Sections 4.01(c), (f) and (j).

(c) Closing Date Acquisition and Other Transactions. The Closing Date Acquisition shall have been consummated or, substantially concurrently with the initial Credit Extension, shall be consummated, in all material respects in accordance with the terms of the Closing Date Acquisition Agreement.

(d) Opinion of Counsel. The Administrative Agent shall have received, on behalf of itself, the Collateral Agent and the Lenders, a customary opinion of Gibson, Dunn & Crutcher LLP, special counsel for the Credit Parties dated as of the Closing Date and addressed to the Agents and the Lenders.

(e) Solvency Certificate. The Administrative Agent shall have received a solvency certificate in the form of Exhibit H dated the Closing Date and signed by the chief financial officer (or other officer with reasonably equivalent duties) of the Borrower.

(f) No Material Adverse Effect. No Company Material Adverse Effect (as defined in the Closing Date Acquisition Agreement) will have occurred after the date of the Closing Date Acquisition Agreement that is continuing.

(g) Fees. The Lenders and the Administrative Agent shall have received all fees and other amounts due and payable to them by the Borrower on or prior to the Closing Date (which amounts may be offset against the proceeds of the initial Credit Extension), including, to the extent invoiced, reimbursement or payment of all reasonable and documented out-of-pocket fees and expenses (including the legal fees and expenses of Proskauer Rose LLP, special counsel to the Agents) required to be reimbursed or paid by the Borrower under this Agreement, including, without limitation, as set forth in the Fee Letter; *provided* that, in the case of costs and expenses, an invoice for all such fees and expenses shall be received by the Borrower at least five (5) Business Days prior to the Closing Date for payment to be required as a condition to the Closing Date.

(h) Patriot Act. So long as reasonably requested in writing by the Administrative Agent at least ten (10) Business Days prior to the Closing Date, the Administrative Agent shall have received, at least three (3) Business Days prior to the Closing Date, all documentation and other information, including, without limitation, each Credit Party's W-9, with respect to the Credit Parties that is reasonably determined to be required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act. If the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Borrower shall deliver a Beneficial Ownership Certification at least three (3) Business Days prior to the Closing Date (to the extent reasonably requested in writing by the Administrative Agent at least ten (10) Business Days prior to the Closing Date).

(i) Refinancing. The Closing Date Refinancing shall have been consummated substantially concurrently with the initial Credit Extension and the Lenders shall have received a customary payoff letter with respect to the refinanced credit facility.

(j) Representation and Warranties. Each of the representations and warranties of the Loan Parties set forth herein and in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) as of the Closing Date, except to the extent the same expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any portion of any representation and warranty that is already qualified or modified by materiality in the text thereof) as of such earlier date.

(k) Creation and Perfection of Security Interests. Notwithstanding anything to the contrary in this Section 4.01, with respect to the Secured Obligations, all actions necessary to establish that the Collateral Agent will have a perfected first priority security interest (subject to Permitted Liens) in the Collateral under the Loan Documents shall have been taken, in each case, to the extent such Collateral (including the creation or perfection of any security interest) is required to be provided on the Closing Date; *provided* that to the extent any security interest in the Collateral is not granted or perfected on the Closing Date after Borrower's commercially reasonable efforts to do so (other than (x) grants of Collateral subject to the UCC and the delivery of and authorization to file Uniform Commercial Code financing statements, (y) the filing of Intellectual Property security agreements in the United States Patent and Trademark Office or the United States Copyright Office, as the case may be (for the avoidance of doubt, the Borrower shall not be obligated to perfect any foreign Intellectual Property), and (z) the delivery of stock certificates and stock powers for "certificated securities" (as defined in Article 8 of the UCC) of the Borrower's material, Wholly Owned Subsidiaries that are organized under the laws of the United States, any state thereof or the District of Columbia (other than Excluded Equity Interests) that are part of the Collateral; *provided* that such "certificated securities" issued by Punchh Inc. and its Subsidiaries will be required to be delivered hereunder only to the extent received from Punchh Inc., after use of commercially reasonable efforts to obtain such "certificated securities" (it being understood that that any such "certificated securities" not so delivered on the Closing Date will be required to be delivered within 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole, reasonable discretion))), the grant or perfection of such security interest (including, without limitation, the security interest on any Real Property that is part of the Collateral) shall not constitute a condition precedent to the availability of the Credit Extension to be made on the Closing Date, but shall be granted or perfected, as the case may be, within 90 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole, reasonable discretion or as provided in Section 5.15).

(l) Notice. The Administrative Agent shall have received a Borrowing Request as required by Section 2.03 (or such notice shall have been deemed to be given in accordance with Section 2.03) for any Loans to be made on the Closing Date.

(m) Financial Statements; Pro Forma Financial Information. The Administrative Agent shall have received (i) the Historical Financial Statements and (ii) the Pro Forma Balance Sheet.

In determining the satisfaction of the conditions specified in this Section 4.01, (y) to the extent any item is required to be satisfactory to any Lender, such item shall be deemed satisfactory to each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date that the respective item or matter does not meet its satisfaction and (z) in determining whether any Lender is aware of any fact, condition or event that has occurred and which would reasonably be expected to have a Material Adverse Effect or a Material Adverse Effect (as defined in the Closing Date Acquisition Agreement), each Lender which has not notified the Administrative Agent in writing prior to the occurrence of the Closing Date of such fact, condition or event shall be deemed not to be aware of any such fact, condition or event on the Closing Date. Upon the Administrative Agent's good faith determination that the conditions specified in this Section 4.01 have been met (after giving effect to the preceding sentence), then the Closing Date shall have been deemed to have occurred, regardless of any subsequent determination that one or more of the conditions thereto had not been met.

Without limiting the generality of Section 9.05(b), for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder or thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V
AFFIRMATIVE COVENANTS

The Borrower and the Subsidiary Guarantors warrant, covenant and agree with each Lender that at all times after the Closing Date, so long as this Agreement shall remain in effect and until the Obligations have been Paid in Full and the Commitments have been terminated, the Borrower and the Subsidiary Guarantors will, and will cause each of their respective Restricted Subsidiaries to:

Section 5.01 Financial Statements, Reports, etc. Furnish to the Administrative Agent for distribution to each Lender:

(a) Annual Reports. Within one hundred twenty (120) days after the last day of each fiscal year of the Borrower commencing with the fiscal year ending December 31, 2021, a copy of the consolidated balance sheet of the Borrower and its Restricted Subsidiaries (that, together with its combined and consolidated Subsidiaries, constitutes substantially all of the assets of the Borrower and its combined and consolidated Subsidiaries) as of the last day of the fiscal year then ended and the consolidated statements of income and cash flows of the Borrower and its Restricted Subsidiaries for the fiscal year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year (starting with the fiscal year ending December 31, 2022) (provided that the Borrower shall be permitted to deliver its 10-K within such timeframe to satisfy the above financial delivery requirement) accompanied by an annual audit opinion from nationally recognized auditors or other accounting firm selected by the Borrower and reasonably acceptable to the Administrative Agent (which opinion shall be not be subject to any qualification, exception or explanatory paragraph as to "going concern" or scope of the audit, subject to the proviso below) to the effect that the consolidated financial statements have been prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition and results of operations and cash flows of the Borrower and its Restricted Subsidiaries as of the close of and for such fiscal year; *provided* that such financial statements may contain a qualification, exception or explanatory paragraph that is expressly solely with respect to, or expressly resulting from, (A) an upcoming maturity date of the Loans or any other Indebtedness, (B) any potential inability to satisfy the Financial Covenants, or any financial covenant under any other Indebtedness on a future date or in a future period or (C) the activities, operations, financial results, assets or liabilities of any Unrestricted Subsidiary; in each case, such financial statements shall be accompanied by a customary management discussion and analysis of the financial performance of the Borrower and its Restricted Subsidiaries.

(b) Quarterly Reports. Commencing with the fiscal quarter ending June 30, 2021, within forty-five (45) days after the last day of each of the first three fiscal quarters of each fiscal year of the Borrower for which financial statements are required to be delivered pursuant to this clause (b), a copy of the unaudited consolidated balance sheet of the Borrower and its Restricted Subsidiaries (that, together with its combined and consolidated Subsidiaries, constitutes substantially all of the assets of the Borrower and its combined and consolidated Subsidiaries) as of the last day of such fiscal quarter and the unaudited consolidated statements of income and cash flows of the Borrower and its Restricted Subsidiaries for the fiscal quarter then ended, each in reasonable detail and showing in comparative form the figures for the corresponding date and period in the previous fiscal year of the Borrower, prepared by the Borrower in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments) (provided that the Borrower shall be permitted to deliver its 10-Q within such timeframe to satisfy the above financial delivery requirement) and certified on behalf of the Borrower by a Financial Officer as prepared in accordance with GAAP subject to the absence of footnote disclosures and year-end audit adjustments and presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Restricted Subsidiaries; in each case, such financial statements shall be accompanied by a customary management discussion and analysis of the financial performance of the Borrower and its Restricted Subsidiaries;

(c) Financial Officer's Certificate. Concurrently with any delivery of financial statements under Section 5.01(a) or (b), a Compliance Certificate (i) certifying on behalf of the Borrower that, to its knowledge, no Default or Event of Default has occurred and is continuing or, if any such known Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; *provided* that, if such Compliance Certificate demonstrates that an Event of Default has occurred and is continuing due to a failure to comply with any covenant under Section 6.08 that has not been cured prior to such time, the Borrower may deliver, to the extent and within the time period permitted by Section 8.03, prior to, after or together with such Compliance Certificate, a Notice of Intent to Cure such Event of Default, (ii) setting forth the computation of the Financial Covenants then in effect and (iii) setting forth, in the case of each Compliance Certificate delivered concurrently with any delivery of financial statements under Section 5.01(a) above, the Borrower's calculation of Excess Cash Flow starting with the fiscal year ending December 31, 2022; *provided* that, for the avoidance of doubt, no Compliance Certificate shall "bring down" any representations and warranties made herein or in any other Loan Document;

(d) [Reserved].

(e) Revenues Reporting.

(i) Concurrently with any delivery of financial statements under Section 5.01(a) or (b), a quarterly report with respect to total revenue (in each case, showing the split between revenues for Software, payments, hardware, services and government) for the Borrower and its Restricted Subsidiaries, on both a current basis and a Pro Forma Basis including the Closing Date Acquisition and any other Subject Transaction and showing in comparative form the figures for the corresponding date and period in the previous fiscal year of the Borrower, prepared by the Borrower in accordance with GAAP (subject to the absence of footnote disclosures and year-end audit adjustments); and

(ii) Concurrently with any delivery of financial statements under Section 5.01(b), back-up documentation with respect to the calculation of Annual Recurring Revenue for the most recently ended Test Period on both a current basis and a Pro Forma Basis including the Closing Date Acquisition and any other Subject Transaction and showing in comparative form the figures for the corresponding date and period in the previous fiscal year of the Borrower.

(f) Other Information. Promptly, from time to time, and upon the reasonable written request of the Administrative Agent, other reasonably requested information of the Group Members regarding the operations, business affairs and financial condition (including (x) information required under the Patriot Act, (y) an updated Beneficial Ownership Certification and (z) to the extent available to the Borrower, any material agreements, documents or instruments pursuant to which any Permitted Acquisition is to be consummated; *provided* that nothing in this Section 5.01(g) shall require any Group Member to take any action that would violate any third party customary confidentiality agreement (other than any such confidentiality agreement entered into in contemplation of this Agreement) with any Person that is not an Affiliate (and, in all events, so long as such confidentiality agreement does not relate to information regarding the financial affairs of any Group Member or the compliance with the terms of any Loan Document) or waive any attorney-client or similar privilege.

Documents required to be delivered pursuant to Section 5.01(a) through Section 5.01(f) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are sent via e-mail to the Administrative Agent for posting on the Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, established on its behalf by the Administrative Agent and to which each Lender and the Administrative Agent have access or the date on which the Borrower has posted such documents on its own website to which each Lender and the Administrative Agent have access and notified the Administrative Agent of such posting. Notwithstanding anything contained herein, at the reasonable written request of the Administrative Agent, the Borrower shall thereafter promptly be required to provide paper copies of any documents required to be delivered pursuant to Section 5.01. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents. If the delivery of any of the foregoing documents required under this Section 5.01 shall fall on a day that is not a Business Day, such deliverable shall be due on the next succeeding Business Day.

Section 5.02 Litigation and Other Notices. Furnish to the Administrative Agent written notice of the following promptly (and, in any event, within seven (7) Business Days or such later date as may be agreed by the Administrative Agent in its reasonable discretion) of a Responsible Officer of the Borrower obtaining actual knowledge thereof:

(a) any Default or Event of Default (provided that (i) no such notice shall be required if cured within 30 days or within the applicable cure period and (ii) any delivery of a notice of Default shall automatically cure any Default or Event of Default then existing with respect to any failure to deliver such notice), specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) any litigation or governmental proceeding pending against the Borrower or any of its Subsidiaries that could reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that could, when taken either alone or together with all such other ERISA Events, reasonably be expected to have a Material Adverse Effect;

(d) Budgets. Commencing with the fiscal year beginning January 1, 2022, within forty-five (45) days after the beginning of each fiscal year, an annual budget (on a quarterly basis) in form customarily prepared with regard to the Borrower and its Restricted Subsidiaries by the Borrower;

(e) [reserved]; and

(f) copies of any amendment, amendment and restatement, consent, waiver, supplement or other modification to or of the Senior Notes Indebtedness or any Junior Secured Indebtedness subject to an Intercreditor Agreement or any Subordinated Indebtedness.

Section 5.03 Existence; Properties.

(a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence, except as otherwise permitted under Sections 6.04 or 6.05 or, in the case of any Restricted Subsidiary that is not a Credit Party, where the failure to perform such obligations could not reasonably be expected to result in a Material Adverse Effect.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations and Intellectual Property which are necessary and material to the conduct of its business (except where the failure to do so could not be reasonably expected to have a Material Adverse Effect); *provided* that nothing in this Section 5.03(b) shall prevent sales of property, consolidations or mergers by or involving any Company in accordance with Section 6.04 or 6.05. Notwithstanding the foregoing or anything else to the contrary in any Loan Document, each Credit Party and each other Restricted Subsidiary may abandon, cancel, terminate, permit or allow the lapse, invalidation, expiration, cancellation, cessation or termination of, or fail to maintain, pursue, preserve or protect any of its respective Intellectual Property that are, in the reasonable business judgment of such Credit Party or Restricted Subsidiary, no longer economically practicable, commercially desirable to maintain or useful, except to the extent any such abandonment, lapse, cancellation, termination, cessation or failure, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(c) Except to the extent the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, maintain, preserve and protect all of its properties and equipment material to the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted.

Section 5.04 Insurance.

(a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, in each case, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations.

(b) From and after thirty (30) days after the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion), the Credit Parties shall cause all such insurance (other than directors and officers policies and workers compensation) with respect to the Credit Parties and property constituting Collateral to be endorsed to provide that the Collateral Agent is an additional insured or loss payee, as applicable, and that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Collateral Agent of written notice thereof (or if such cancellation is by reason of nonpayment of premium, at least ten (10) days' prior written notice) (unless it is such insurer's policy not to provide such a statement); *provided* that, unless an Event of Default shall have occurred and be continuing, (A) all proceeds from insurance policies shall be paid to the Borrower or applicable Guarantor (subject to the requirements of Section 2.10(e) hereof), (B) to the extent the Collateral Agent receives any proceeds, the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by the Borrower and its Subsidiaries (subject to the requirements of Section 2.10(e) hereof), and (C) the Collateral Agent agrees that the Borrower and/or its applicable Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(c) If at any time the buildings and other improvements (as described in the applicable Mortgage) on a Material Property that is encumbered by a Mortgage required by this Agreement are located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then, solely to the extent required by applicable Requirements of Law, the Borrower shall, or shall cause the applicable Credit Party to, maintain, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

Section 5.05 Taxes. Pay and discharge promptly when due all Taxes imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent, or in default; *provided* that such payment and discharge shall not be required with respect to any such Tax so long as (x)(i) the validity or amount thereof shall be contested in good faith by appropriate proceedings and the applicable Group Member shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP and (ii) such contest operates to suspend collection of the contested Tax and enforcement of a Tax Lien (other than a Permitted Lien) or (y) the failure to pay would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.06 Employee Benefits.

(a) With respect to each Employee Benefit Plan and Foreign Plan, comply in all respects with the applicable provisions of ERISA, the Code and applicable Requirements of Law except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect; and

(b) Furnish to the Administrative Agent (x) as soon as reasonably practicable after, and in any event within 10 days (or such later date as may be agreed to by the Administrative Agent in its sole discretion) after any Responsible Officer of the Borrower or any of its Subsidiaries knows or has reason to know that any failures to meet funding or other applicable Requirements of Law with respect to Foreign Plans has occurred that, alone or together with any other such noncompliance event with respect to Foreign Plans, would reasonably be expected to result in liability of the Borrower or any of its Subsidiaries which would reasonably be expected to have a Material Adverse Effect, a statement of a Responsible Officer of the Borrower setting forth details as to such noncompliance event with respect to Foreign Plans and the action, if any, that the Group Members propose to take with respect thereto, (y) upon reasonable request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Group Members or any ERISA Affiliate thereof with the Internal Revenue Service with respect to each Plan; (ii) the most recent actuarial valuation report for each Plan or Foreign Plan; (iii) all notices received by the Borrower or any of its Subsidiaries from a Multiemployer Plan sponsor or any Governmental Authority concerning an ERISA Event or such noncompliance event with respect to Foreign Plans; and (iv) such other documents or governmental reports or filings relating to any Plan or Foreign Plan in each case, that is sponsored by, or contributed to by, the Borrower or a Subsidiary of the Borrower, as have been received by the Borrower or a Subsidiary of the Borrower and that the Administrative Agent shall reasonably request and (z) promptly following any request therefor, copies of (i) any documents described in Section 101(k) of ERISA that the Borrower or any of its Subsidiaries has received with respect to any Multiemployer Plan and (ii) any notices described in Section 101(1) of ERISA that the Borrower or any of its Subsidiaries has received with respect to any Multiemployer Plan; *provided* that if any Group Member has not received such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, upon the Administrative Agent's reasonable request, the applicable Group Member shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof; and *provided further*, the obligations of the Group Members under this Section shall be subject to applicable Requirements of Law, including protection of data privacy.

Section 5.07 Maintaining Records; Access to Properties and Inspections. Each Group Member will permit any representatives designated by the Administrative Agent to visit during its regular business hours and with reasonable advance written notice thereof (provided that no such advance notice shall be required during the continuance of an Event of Default) and inspect (subject to the rights of lessees or sublessees thereof and subject to any restrictions or limitations in the applicable lease, sublease or other written occupancy arrangement pursuant to which the Borrower or Restricted Subsidiary is a party, in each case, not entered into in contemplation of avoiding the requirements of this Section 5.07) the financial records and the property of such Group Member at reasonable times up to one (1) time per calendar year (but without frequency limit during the continuance of an Event of Default) and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent to discuss the affairs, finances, accounts and condition of any Group Member with the officers and employees thereof and advisors therefor (including independent accountants); *provided* that the Administrative Agent shall give any Group Member an opportunity for its representatives to participate in any such discussions; *provided*, *further*, that so long as no Event of Default has occurred and is then continuing, the Borrower shall not bear the cost of more than one such inspection per calendar year by the Administrative Agent and Lenders (or their respective representatives). Notwithstanding anything to the contrary in this Section 5.07, no Group Member will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes confidential Intellectual Property, including trade secrets, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Requirements of Law or any binding agreement (not entered into in contemplation hereof), or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 5.08 Use of Proceeds. Use the proceeds of the Loans only for the purposes set forth in Section 3.11.

Section 5.09 Compliance with Environmental Laws; Environmental Reports.

(a) Except as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) comply with all Environmental Laws and Environmental Permits applicable to its operations and Real Property; (ii) obtain and renew all Environmental Permits applicable to its operations and owned Real Property and, to the extent the Group Members are required to obtain such Environmental Permits under the applicable lease or Requirements of Law, leased Real Property; and (iii) comply with all lawful orders of a Governmental Authority required of the Group Members by, and in accordance with, Environmental Laws; *provided* that no Group Member shall be required to comply with such orders to the extent that its obligation to do so is being contested in good faith and by proper proceedings.

(b) If an Event of Default caused by reason of a breach of Section 3.17 or 5.09(a) shall have occurred and be continuing for more than thirty (30) days without the Group Members commencing activities reasonably likely to cure such Event of Default in accordance with Environmental Laws, at the reasonable written request of the Administrative Agent or the Required Lenders through the Administrative Agent, which written request will describe the nature and subject of the Event of Default, the Borrower shall provide to the Administrative Agent within sixty (60) days after such request (or by such later date as may be agreed to by the Administrative Agent in its sole discretion), at the expense of the Borrower, an environmental assessment report regarding the matters which are the subject of such Event of Default, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent; *provided, however*, notwithstanding anything to the contrary contained herein or in any other Loan Document, under no other circumstances shall any environmental assessment report (or any other environmental report) be required under any Loan Document.

Section 5.10 Additional Collateral; Additional Guarantors.

(a) Subject to the terms of the Security Documents and Section 3.18, Section 4.01(k), Section 5.11 and Section 5.15, with respect to any personal property created or acquired after the Closing Date by any Credit Party that constitutes "Collateral" under any of the Security Documents or is intended to be subject to the Liens created by any Security Document but is not so subject to a Lien thereunder, but in any event subject to the terms, conditions and limitations thereunder, within sixty (60) days after the acquisition thereof, or such longer period as the Administrative Agent may approve in each case in its sole discretion, (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents, including, without limitation, customary legal opinions as the Administrative Agent or the Collateral Agent shall reasonably deem necessary to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien under applicable U.S. state and federal law on such Collateral subject to no Liens other than Permitted Liens, and (ii) take all actions reasonably necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable U.S. state and federal law, including the filing of financing statements in such U.S. jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. The Borrower and the other Credit Parties shall otherwise take such actions and execute and/or deliver to the Collateral Agent (or its non-fiduciary agent or designee pursuant to any Intercreditor Agreement) such New York law governed documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Security Documents on such after-acquired Collateral.

(b) Subject to the terms of the Security Documents and Section 5.15, upon the formation or acquisition of, or the re-designation of an Unrestricted Subsidiary as, a Restricted Subsidiary (other than any Excluded Subsidiary) after the Closing Date (other than a merger Subsidiary formed in connection with a Permitted Acquisition so long as such merger Subsidiary is merged out of existence pursuant to such Permitted Acquisition or otherwise merged out of existence or dissolved within sixty (60) days of its formation (or such later date as permitted by the Administrative Agent in its sole discretion)) or upon any Excluded Subsidiary ceasing to constitute an Excluded Subsidiary (as reasonably determined by the Borrower), within sixty (60) days after such formation, acquisition, designation or cessation, or such longer period as the Administrative Agent may approve in its reasonable discretion, the Borrower shall:

(i) deliver to the Collateral Agent the certificates, if any, representing all of the Equity Interests of such Restricted Subsidiary that constitute Collateral and that are "certificated securities" (as defined in Article 8 of the UCC), together with undated Equity Interest powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Restricted Subsidiary to any Credit Party required to be delivered pursuant to the Security Agreement or other applicable Security Document and not previously so delivered, together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party or Additional Guarantor, as applicable; and

(ii) cause any such new Restricted Subsidiary (except Excluded Subsidiaries), (A) to execute a Joinder Agreement or such comparable documentation to become a Subsidiary Guarantor (including, without limitation, (1) all documentation and other information with respect to such new Restricted Subsidiary required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the Patriot Act, and (2) customary secretary's certificates with respect to each new Restricted Subsidiary attaching such documents as were delivered by the original Subsidiary Guarantors on the Closing Date) and a joinder agreement to the Security Agreement, substantially in the form annexed thereto, and (B) to take all actions reasonably necessary to cause the Lien created on the Collateral (which shall exclude Excluded Property and be subject to the limitations set forth herein and the applicable Security Documents) by the applicable Security Documents to be duly perfected under U.S. federal and applicable state and local law to the extent required by such agreements in accordance with all applicable U.S. Requirements of Law, including the filing of financing statements in such U.S. jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent; *provided* that (x) no pledge of Excluded Equity Interests shall be required and (y) no perfection actions by "control" (except with respect to Equity Interests and certain debt instruments) shall be required to be taken. For the avoidance of doubt, the Credit Parties shall be under no obligation to deliver any leasehold mortgages, landlord waivers or collateral access agreements with respect to Real Property.

(c) Upon the acquisition of any new Material Property:

(i) within fifteen (15) Business Days after such acquisition (as such period may be extended by the Administrative Agent in its sole discretion), the applicable Credit Party shall furnish to the Collateral Agent a description of such Material Property in detail reasonably satisfactory to the Collateral Agent; and

(ii) within ninety (90) days after such acquisition (as such period may be extended by the Administrative Agent in its sole discretion), the applicable Credit Party shall grant to the Collateral Agent a security interest in such Material Property and deliver a mortgage, deed of trust or deed to secure debt in a form reasonably satisfactory to the Collateral Agent (a "**Mortgage**") as additional security for the Obligations (which, if reasonably requested by the Administrative Agent, shall be accompanied by a customary legal opinion) and deliver to the Administrative Agent, a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination, together with a notice executed by such Credit Party about special flood hazard area status, if applicable, in respect of such Mortgage.

Section 5.11 Security Interests; Further Assurances. Subject to the terms of the Security Documents, Section 5.10 and Section 5.15, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Security Document or other document or instrument relating to any Collateral, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or the Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of this Agreement and the Security Documents; *provided* that, notwithstanding anything else contained herein or in any other Loan Document to the contrary, (w) neither the Borrower nor any Guarantor shall be required to make any filings or take any other actions to perfect the Lien on and security interest in any Intellectual Property (or to reimburse the Administrative Agent or Collateral Agent for any costs incurred in connection with the same) except for filings in the United States Patent and Trademark Office and the United States Copyright Office or by filing a UCC financing statement, (x) the foregoing shall not apply to any Excluded Subsidiary or Property of any Excluded Subsidiary or any Excluded Property or any Excluded Equity Interests, (y) any such documents and deliverables (other than certain mortgages of Material Property) shall be governed by New York law and (z) no other perfection actions by "control" (except with respect to Equity Interests and certain debt instruments), leasehold mortgages or landlord waivers, estoppels or collateral access agreements shall be required to be taken or entered into hereunder or under any other Loan Document. Notwithstanding the foregoing or anything else herein or in any other Loan Document to the contrary, in no event shall (A) the assets of any CFC Holding Company or CFC constitute security or secure, or such assets or the proceeds of such assets be required to be available for, payment of the Obligations, (B) more than sixty-five percent (65%) of the Voting Stock of any first-tier CFC Holding Company or CFC or (C) any Equity Interests of any direct or indirect Subsidiary of any CFC Holding Company or CFC.

Section 5.12 [Reserved].

Section 5.13 Compliance with Laws. Comply with the requirements of all Requirements of Law and all orders, writs, injunctions and decrees applicable to the Borrower or any Restricted Subsidiary or to their business or property, except to the extent that the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Section 5.14 Anti-Terrorism Law; Anti-Money Laundering; Foreign Corrupt Practices Act.

(a) Not directly or indirectly, (i) knowingly deal in, or otherwise knowingly engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law in violation of any applicable Anti-Terrorism Law or applicable Sanctions, or (ii) knowingly engage in or conspire to engage in any transaction that violates or attempts to violate, any of the material prohibitions set forth in any applicable Anti-Terrorism Law or applicable Sanctions;

(b) (i) Not repay the Loans, or make any other payment to any Lender, using funds or properties of the Borrower or any Subsidiaries that are, to the knowledge of the Borrower, the property of any Person that is the subject or target of applicable Sanctions or that are, to the knowledge of the Borrower, fifty percent or more beneficially owned, directly or indirectly, by any Person that is the subject or target of applicable Sanctions, in each case, in violation of applicable Anti-Terrorism Laws or applicable Sanctions or (ii) to the knowledge of Borrower, permit any Person that is the subject of applicable Sanctions to have any direct or indirect interest, in the Borrower, Borrower or any of the Subsidiaries, with the result that the investment in the Borrower, Borrower or any of the Subsidiaries (whether directly or indirectly) or the Loans made by the Lenders would be in violation of any applicable Sanctions.

(c) Each Credit Party and its Restricted Subsidiaries will maintain in effect and enforce policies and procedures that are reasonably designed to ensure compliance by the Credit Parties, their subsidiaries and each of their respective directors, officers, employees and agents with the Foreign Corrupt Practices Act of 1977, as amended.

(d) To the extent applicable, each Credit Party and its Restricted Subsidiaries will comply with (i) the laws, regulations, Sanctions and executive orders administered by OFAC, (ii) all Anti-Terrorism Laws, (iii) the Foreign Corrupt Practices Act of 1977, as amended and (iv) the Patriot Act. No Credit Party nor any of their respective Restricted Subsidiaries will (A) engage in or conspire to engage in any transaction that attempts to violate (or evade in a manner that could violate) any of the foregoing or any similar Requirements of Law or (B) engage in or conspire to engage in any transaction that avoids, or has the purposes of avoiding any of the laws and regulations referenced in clauses (i), (ii) or (iv) of this clause (d) or any similar Requirements of Law.

Section 5.15 Post-Closing Deliveries.

(a) The Borrower hereby agrees to deliver, or cause to be delivered, to the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.15 hereof on or before the dates specified with respect to such items, or such later dates as may be agreed to by, or as may be waived by, the Administrative Agent in its sole discretion.

(b) All representations and warranties contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described above within the time periods required above and in Schedule 5.15, rather than as elsewhere provided in the Loan Documents); *provided* that (x) to the extent any representation and warranty would not be true because the foregoing actions were not taken on the Closing Date or, following the Closing Date, prior to the date by which such action is required to be taken by Section 5.15(a), the respective representation and warranty shall be required to be true and correct in all material respects at the time the respective action is taken (or was required to be taken) in accordance with the foregoing provisions of this Section 5.15 (and Schedule 5.15) and (y) all representations and warranties relating to the assets set forth on Schedule 5.15 pursuant to the Security Documents shall be required to be true in all material respects immediately after the actions required to be taken under this Section 5.15 (and Schedule 5.15) have been taken (or were required to be taken), except to the extent any such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

ARTICLE VI
NEGATIVE COVENANTS

Each of the Credit Parties warrants, covenants and agrees with each Lender that at all times after the Closing Date, so long as this Agreement shall remain in effect and until the Obligations have been Paid in Full, none of the Credit Parties will, nor will permit any of its Restricted Subsidiaries to:

Section 6.01 Indebtedness. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

(a) Indebtedness incurred under this Agreement and the other Loan Documents (including Indebtedness incurred pursuant to Section 2.20, Section 2.21 and Section 2.22 hereof), and, in each case, any Permitted Refinancing thereof;

(b) (x) Indebtedness in existence on the Closing Date and set forth on Schedule 6.01(b) and (y) Permitted Refinancings thereof;

(c) without duplication, Permitted Pari Passu Refinancing Debt and Permitted Unsecured Refinancing Debt, and, in each case, any Permitted Refinancing thereof;

(d) Indebtedness under Hedging Obligations with respect to interest rates, foreign currency exchange rates or commodity prices not entered into for speculative purposes;

(e) Indebtedness in respect of Purchase Money Obligations, Capital Lease Obligations, Indebtedness incurred in connection with Sale Leaseback Transactions and Indebtedness incurred in connection with financing any Real Property, and any Permitted Refinancings of any of the foregoing, in an aggregate amount for all such Indebtedness under this clause (e) not to exceed, at any time outstanding, (x) the greater of $12,000,000 and 5.8% of Annual Recurring Revenue for the most recently ended Test Period;

(f) Indebtedness in respect (x) appeal bonds or similar instruments and (y) of payment, bid, performance or surety bonds, or other similar bonds, completion guarantees, or similar instruments, workers' compensation claims, health, disability or other employee benefits, self-insurance obligations, and bankers acceptances issued for the account of any Group Member, in each case, in the ordinary course of business and including guarantees supporting such appeal, payment, bid, performance or surety or other similar bonds, completion guarantees, or similar instruments, workers' compensation claims, health, disability or other employee benefits, self-insurance obligations and bankers acceptances (in each case other than for an obligation for money borrowed);

(g) (i) Contingent Obligations in respect of Indebtedness otherwise permitted to be incurred by such Group Member under this Section 6.01 (*provided* that (x) the foregoing shall not permit a Group Member to guarantee Indebtedness that it could not otherwise incur under this Section 6.01 and (y) if any such Indebtedness is subordinated (including as to lien or collateral priority) to the Obligations, such Contingent Obligation shall be subordinated on terms at least as favorable to the Lenders) and (ii) Indebtedness constituting Investments permitted under Section 6.03 (other than Section 6.03(l));

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided*, *however*, that such Indebtedness is extinguished within five (5) Business Days of incurrence;

(i) Indebtedness arising in connection with the endorsement of instruments for deposit in the ordinary course of business;

(j) Indebtedness in respect of netting services or overdraft protection or otherwise in connection with deposit or securities accounts in the ordinary course of business;

(k) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(l) subject to Section 6.03(e), intercompany Indebtedness owing (i) by and among the Credit Parties, (ii) by Restricted Subsidiaries that are not Credit Parties to Restricted Subsidiaries that are not Credit Parties, (iii) by Restricted Subsidiaries that are not Credit Parties to Credit Parties; *provided* that outstanding Indebtedness under this clause (l)(iii) (together (but without duplication) with Investments made pursuant to Section 6.03(e)(iii)) shall not exceed, at any time, $15,000,000, and (iv) by Credit Parties to Restricted Subsidiaries that are not Credit Parties; *provided* that Indebtedness under this clause (l)(iv) shall be subordinated to the Obligations pursuant to subordination terms reasonably acceptable to the Administrative Agent and shall not exceed at any time $15,000,000;

(m) Indebtedness arising as a direct result of judgments, orders, awards or decrees against the Borrower or any Restricted Subsidiaries, in each case not constituting an Event of Default;

(n) unsecured Indebtedness representing any Taxes to the extent such Taxes are being contested by any Group Member in good faith by appropriate proceedings and adequate reserves are being maintained by the Group Members in accordance with GAAP;

(o) Indebtedness assumed in connection with any Permitted Acquisition or other permitted Investment (*provided* that such Indebtedness was not incurred in contemplation of such Permitted Acquisition or other Investment) or incurred to finance a Permitted Acquisition or other Investment; *provided* that the aggregate principal amount of all such Indebtedness shall not exceed the greater of $15,000,000 and 7.2% of Annual Recurring Revenue for the most recently ended Test Period;

(p) Indebtedness of Restricted Subsidiaries that are not Credit Parties (but only to the extent non-recourse to the Credit Parties), and any guarantees thereof by Restricted Subsidiaries that are not Credit Parties, in aggregate principal amount not to exceed (taken together with any Indebtedness of Restricted Subsidiaries that are not Credit Parties pursuant to Section 6.01(r) and Section 6.01(s)) the greater of $10,000,000 and 4.8% of Annual Recurring Revenue for the most recently ended Test Period at any time outstanding;

(q) the Senior Notes Indebtedness and Permitted Refinancings thereof;

(r) unsecured Indebtedness (subject to compliance with the Required Debt Terms); *provided* that, immediately after giving effect to each such incurrence and the application of the proceeds therefrom, on a Pro Forma Basis (but without giving effect to any amounts incurred in connection herewith under the Fixed Incremental Amount) as of the date of determination and for the applicable Test Period the Total Net Annual Recurring Revenue Leverage Ratio does not exceed 4.50 to 1.00 at any time outstanding; *provided further* that the aggregate principal amount of Indebtedness incurred pursuant to this clause (r) by Restricted Subsidiaries that are not Credit Parties (taken together with any Indebtedness of Restricted Subsidiaries that are not Credit Parties pursuant to Section 6.01(p) and Section 6.01(s)) shall not exceed the greater of $10,000,000 and 4.8% of Annual Recurring Revenue for the most recently ended Test Period at any time outstanding;

(s) Junior Secured Indebtedness, subject to compliance with the Required Debt Terms; *provided* that immediately after giving effect to each such incurrence and the application of the proceeds therefrom, on a Pro Forma Basis (but without giving effect to any amounts incurred in connection herewith under the Fixed Incremental Amount) as of the date of determination and for the applicable Test Period the Secured Net Annual Recurring Revenue Leverage Ratio does not exceed 2.60 to 1.00; *provided further* that the aggregate principal amount of Indebtedness incurred pursuant to this clause (s) by Restricted Subsidiaries that are not Credit Parties (taken together with any Indebtedness of Restricted Subsidiaries that are not Credit Parties pursuant to Section 6.01(p) and Section 6.01(r)) shall not exceed the greater of $10,000,000 and 4.8% of Annual Recurring Revenue for the most recently ended Test Period at any time outstanding;

(t) additional Indebtedness of the Borrower and the other Restricted Subsidiaries; *provided* that, immediately after giving effect to any of incurrence of Indebtedness under this clause (x), the sum of the aggregate principal amount of Indebtedness outstanding under this clause (x) shall not exceed the greater of $18,750,000 and 9.0% of Annual Recurring Revenue for the most recently ended Test Period at such time;

(u) Indebtedness of the Borrower or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any credit facility permitted hereunder, so long as (i) such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee and (ii) such letters of credit and bank guarantees (in each case, assuming they are fully drawn) issued pursuant to such permitted credit facility (together with all other Indebtedness under such permitted credit facility) does not exceed the amount permitted to be incurred pursuant to the applicable provisions of Section 6.01;

(v) to the extent constituting Indebtedness, any contingent liabilities arising in connection with any stock options;

(w) Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections and similar arrangements, in each case, incurred in the ordinary course of business;

(x) Earn-Outs, holdbacks and other similar deferred payment obligations (regardless of whether such amounts constitute Indebtedness, a "**Deferred Payment Obligation**"), in each case, incurred in connection with the any Permitted Acquisition or permitted Investment; *provided* that (i) the aggregate principal amount of such Deferred Payment Obligation shall not exceed $30,000,000 on a Pro Forma Basis as of the date of determination and for the applicable Test Period plus an unlimited amount so long as the Total Net Annual Recurring Revenue Leverage Ratio does not exceed 2.00 to 1.00 and (ii) no Deferred Payment Obligations shall be permitted to be paid unless immediately before and after such payment: (x) no Event of Default shall occur or be continuing either immediately before or immediately after giving effect to such payment, and (y) the Borrower and its Restricted Subsidiaries are in compliance on a Pro Forma Basis with the financial covenants set forth in Section 6.08 (as of the last day of the most recently ended fiscal quarter for which financial statements have been delivered to Administrative Agent);

(y) Contingent Obligations in respect of guarantees of customer equipment leases; *provided* that the aggregate principal amount of all such Contingent Obligations shall not exceed the greater of $8,000,000 and 3.8% of Annual Recurring Revenue for the most recently ended Test Period;

(z) Indebtedness representing deferred compensation to employees incurred in the ordinary course of business; *provided* that the aggregate principal amount of all such Indebtedness shall not exceed the greater of $5,000,000 and 2.4% of Annual Recurring Revenue for the most recently ended Test Period; and

(aa) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (a) through (z) above.

The accrual of interest, the accretion of accreted value and the payment of PIK interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness and the amounts of such accruals and accretions shall not count as amounts of outstanding Indebtedness, for purposes of this Section 6.01.

Section 6.02 Liens. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the "**Permitted Liens**"):

(a) Liens for Taxes not yet due and payable or delinquent and Liens for Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(b) Liens in respect of property of any Group Member imposed by Requirements of Law, (i) which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business or otherwise pertaining to Indebtedness permitted under Section 6.01(f) and (h) which do not in the aggregate materially detract from the value of the property of the Group Members, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Group Members, taken as a whole, and which, if they secure obligations that are then more than thirty days overdue and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, or (ii) arising mandatorily by Requirements of Law on the assets of any Foreign Subsidiary;

(c) any Lien in existence on the Closing Date and set forth on Schedule 6.02(c) and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) except as permitted by Section 6.01(b) does not secure an aggregate amount of Indebtedness (excluding any increase in such Indebtedness as a result of a PIK interest payment), if any, greater than the amount of such Indebtedness secured on the Closing Date or any Permitted Refinancing thereof and (ii) does not encumber any property in a material manner other than the property subject thereto on the Closing Date and any proceeds therefrom (any such Lien, an "**Existing Lien**");

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, conditions, licenses, encroachments, protrusions and other similar charges or encumbrances, and title deficiencies on or other irregularities with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the ordinary conduct of the business and operations of the Group Members at such Real Property and the value, use and occupancy thereof;

(e) Liens to the extent arising out of judgments, orders, attachments, decrees or awards not resulting in an Event of Default;

(f) Liens (x) imposed by Requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (y) incurred to secure the performance of appeal bonds or incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs bonds, statutory bonds, bids, leases (including deposits with respect thereto), government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that (i) with respect to subclauses (x), (y) and (z) of this clause (f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings or orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property subject to any such Lien and (ii) to the extent such Liens are not imposed by Requirements of Law, such Liens shall in no event encumber any property other than cash and cash equivalents (including Cash Equivalents);

(g) Leases, subleases, licenses and sublicenses of any Property (other than Intellectual Property which is subject to Section 6.02(o)) of any Group Member granted by such Group Member to third parties, in each case entered into in the ordinary course of such Group Member's business;

(h) any interest or title of a lessor, sublessor, licensor, sublicensor, licensee or sublicensee under any lease, sublease, license or sublicense (other than interests of a licensee or sublicensee with respect to Intellectual Property, which is subject to Section 6.02(o)) permitted by this Agreement or the other Security Documents;

(i) Liens which may arise as a result of municipal and zoning codes and ordinances, building and other land use laws imposed by any Governmental Authority which are not violated in any material respect by existing improvements or the present use or occupancy of any Real Property, or in the case of any Material Property subject to a Mortgage, encumbrances disclosed in the title insurance policy issued to, and reasonably approved by, the Administrative Agent;

(j) Liens on cash collateral in respect of letters of credit entered into in the ordinary course of business;

(k) Liens securing Indebtedness incurred pursuant to Section 6.01(e); *provided* that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of any Group Member;

(l) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Group Member, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(m) Liens on property or assets of a person existing at the time such person or asset is acquired or merged with or into or consolidated with any Group Member to the extent such acquisition or merger is permitted hereunder (and such Liens are not created in anticipation or contemplation thereof); *provided* that such Liens do not extend to property not subject to such Liens at the time of acquisition (other than improvements thereon or pursuant to an after-acquired property clause in the applicable security documents) and are no more favorable (as reasonably determined by the Borrower) to the lienholders than such existing Lien and do not secure Indebtedness permitted hereunder;

(n) (i) Liens granted pursuant to the Security Documents to secure the Secured Obligations (including Indebtedness incurred pursuant to Section 2.20, Section 2.21 and Section 2.22 hereof) and (ii) any Liens securing Permitted Pari Passu Refinancing Debt; *provided*, in each case, that such Liens are subject to any subordination or intercreditor requirements set forth in the applicable definitions referenced above in this Section 6.02(n);

(o) non-exclusive licenses and sublicenses of Intellectual Property granted by any Group Member in the ordinary course of business or not interfering in any material respect with the ordinary conduct of business of the Group Members;

(p) the filing of UCC (or equivalent) financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(q) Liens securing Hedging Obligations permitted by Section 6.01(d);

(r) Liens securing reimbursement obligations in respect of documentary letters of credit, bankers' acceptances or other similar instruments issued pursuant to Section 6.01(u); *provided* that such Liens attach only to the documents and goods covered thereby and proceeds thereof;

(s) Liens attaching solely to cash earnest money deposits in connection with an Investment permitted by Section 6.03;

(t) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(u) Liens granted by a Restricted Subsidiary (i) that is not a Credit Party in favor of any other Restricted Subsidiary in respect of Indebtedness or other obligations owed by such Restricted Subsidiary to such other Restricted Subsidiary and permitted hereby or (ii) in favor of any Credit Party;

(v) Liens on insurance policies and the proceeds thereof granted in the ordinary course of business to secure the financing of insurance premiums with respect thereto permitted under Section 6.01(k);

(w) Liens (i) incurred in the ordinary course of business in connection with the purchase or shipping of goods or assets (or the related assets and proceeds thereof), which Liens are in favor of the seller or shipper of such goods or assets and only attach to such goods or assets, and (ii) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(x) Liens of any Group Member with respect to Indebtedness and other obligations that do not in the aggregate exceed the greater of $18,750,000 and 9.0% of Annual Recurring Revenue for the most recently ended Test Period at any time;

(y) Liens on assets or property of Restricted Subsidiaries that are not Credit Parties securing Indebtedness and other obligations of Restricted Subsidiaries that are not Credit Parties permitted to be incurred pursuant to Section 6.01;

(z) Liens securing Indebtedness incurred pursuant to Section 6.01(l) (*provided* that, with respect to Indebtedness incurred pursuant clause (iv) thereof, any such Lien shall be subordinated to the liens securing the Obligations pursuant to a subordination agreement reasonably acceptable to the Administrative Agent), to the extent permitted by Section 6.01(l) from being be secured;

(aa) Liens securing Indebtedness incurred pursuant to Section 6.01(o) (so long as, in the case of clause (o)(i), such Liens secure only the same assets (and any after acquired assets pursuant to any after-acquired property clause in the applicable security documents) and the same Indebtedness that such Liens secured, immediately prior to the assumption of such Indebtedness, and so long as such Liens were not created in contemplation of such assumption);

(bb) Liens on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 6.03 to be applied against the purchase price for such Investment;

(cc) Liens on Equity Interests (i) deemed to exist in connection with any options, put and call arrangements, rights of first refusal and similar rights relating to Investments in Persons that are not Restricted Subsidiaries of the Borrower or (ii) of any joint venture or similar arrangement pursuant to any joint venture or similar arrangement;

(dd) restrictions on dispositions of assets to be disposed of pursuant to merger agreements, stock or asset purchase agreements and similar agreements, in each case, solely to the extent such disposition would be permitted pursuant to the terms hereof; and

(ee) Liens securing Indebtedness permitted to be incurred pursuant to Section 6.01(s).

Section 6.03 Investments, Loans and Advances. Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any Equity Interests, bonds, notes, debentures, guarantees or other securities of, or make any capital contribution to, or acquire assets constituting all or substantially all of the assets of, or acquire assets constituting a line of business, business unit or division of, any other person (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted:

(a) the Group Members may consummate the Transactions in accordance with the provisions of the Transaction Documents;

(b) (i) Investments outstanding, contemplated, or made pursuant to binding commitments in effect on the Closing Date and identified on Schedule 6.03(b) and (ii) Investments consisting of any modification, replacement, renewal, reinvestment or extension of any Investment described in clause (i) above; *provided* that (x) the amount of any Investment permitted pursuant to this clause (ii) is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by this Section 6.03 and (y) with respect to contemplated Investments until initially consummated, the terms of such modification, replacement, renewal, reinvestment or extension of such Investment are not materially less favorable to the Borrower or any Restricted Subsidiary than the terms of any such scheduled Investment;

(c) the Group Members may (i) acquire and hold accounts receivable owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) invest in, acquire and hold cash and cash equivalents (including Cash Equivalents), (iii) endorse negotiable instruments held for collection or deposit in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(d) Hedging Obligations permitted by Section 6.01(d);

(e) Investments (i) by any Group Member in a Credit Party, (ii) by any Group Member that is not a Credit Party in any other Group Member and (iii) by any Credit Party in any Restricted Subsidiary that is not a Credit Party; *provided* that Investments under this clause (e)(iii) (together (without duplication) with outstanding intercompany Indebtedness outstanding under Section 6.01(l)(iii)) by the Borrower or a Subsidiary Guarantor in any other Subsidiary that is not a Subsidiary Guarantor shall not exceed, at any time outstanding $15,000,000;

(f) Investments in securities or other assets of trade creditors or customers in the ordinary course of business received in settlement of *bona fide* disputes or upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(g) Investments held by any Group Member as a result of consideration received in connection with an Asset Sale or other disposition made in compliance with Section 6.05 (other than Section 6.05(e));

(h) Permitted Acquisitions;

(i) pledges and deposits by any Group Member permitted under Section 6.02;

(j) Investments consisting of earnest money deposits required in connection with a Permitted Acquisition or other permitted Investment;

(k) Investments of any Person existing at the time such Person becomes a Restricted Subsidiary or consolidates or merges with any Group Member (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Restricted Subsidiary or of such consolidation or merger;

(l) Contingent Obligations and other Indebtedness permitted by Section 6.01, performance guarantees, and transactions permitted under Section 6.04;

(m) [reserved];

(n) Investments in deposit and investment accounts opened in the ordinary course of business with financial institutions;

(o) unsecured intercompany advances by any Group Member to the Borrower for purposes and in amounts that would otherwise be permitted to be made as Dividends to the Borrower pursuant to Section 6.06; *provided* that the principal amount of any such loans shall reduce dollar-for-dollar the amounts that would otherwise be permitted to be paid for such purpose in the form of Dividends pursuant to such Section;

(p) Investments to the extent constituting the reinvestment of the Net Cash Proceeds arising from any Asset Sale (or other disposition) or Casualty Events to repair, replace or restore any property in respect of which such Net Cash Proceeds were paid or to reinvest in other fixed or Capital Assets or assets that are otherwise used or useful in the business of the Group Members (including pursuant to a Permitted Acquisition, Investment or Capital Expenditure);

(q) Investments in Unrestricted Subsidiaries in an aggregate amount not to exceed the greater of $10,000,000 and 4.8% of Annual Recurring Revenue for the most recently ended Test Period at any time outstanding;

(r) purchases and other acquisitions of inventory, materials, equipment, intangible property and other assets in the ordinary course of business;

(s) (i) leases and subleases of real or personal property in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Group Members and (ii) non-exclusive licenses and sublicenses of Intellectual Property permitted under Section 6.02 including loans and advances to licensees in connection therewith on an arm's length basis;

(t) Investments to the extent that payment for such Investments is made solely with cash contributions from the issuance of Equity Interests (other than Disqualified Capital Stock and Equity Cure Contributions) of the Borrower which are Not Otherwise Applied and that are received within the year preceding any such Investments;

(u) Investments in joint ventures of any Group Member or the Borrower; *provided* that the aggregate amount of such Investments outstanding at any time under this clause (w) shall not exceed the greater of $12,500,000 and 6.0% of Annual Recurring Revenue for the most recently ended Test Period;

(v) [reserved];

(w) other Investments in an aggregate amount at any time not to exceed (taken together with any Investments pursuant to Section 6.03(bb)) the greater of $25,000,000 and 12% of Annual Recurring Revenue for the most recently ended Test Period at any time outstanding; plus the aggregate total of all other amounts available as a Restricted Debt Payment under Section 6.09(a)(H), which the Borrower may, from time to time, elect to reallocate to the making of Investments pursuant to this Section 6.03(w) (which re-allocation will reduce the amount available thereunder on a dollar-for-dollar basis for so long as, and to the extent that, the Investment made using such reallocated amount remains outstanding);

(x) to the extent constituting Investments, advances in respect of transfer pricing and cost-sharing arrangements (*i.e.*, "cost-plus" arrangements) that are (A) in the ordinary course of business and consistent with the Group Members' historical practices and (B) funded not more than 120 days in advance of the applicable transfer pricing and cost-sharing payment;

(y) advances of payroll payments to employees in the ordinary course of business;

(z) [reserved];

(aa) Investments in the ordinary course of business (x) consisting of customary commercial arrangements and agreements, including program and course agreements, consistent with past practices and (y) in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to distributors, customers or clients;

(bb) Investments in similar businesses in an aggregate amount outstanding at any time not to exceed (taken together with any Investments pursuant to Section 6.03(w)) the greater of $25,000,000 and 12% of Annual Recurring Revenue for the most recently ended Test Period; *provided* that, at the time of making such Investment no Default or Event of Default shall have occurred and be continuing or would immediately result therefrom; and

(cc) reorganizations and other activities related to tax planning; provided that, in the reasonable business judgment of the Borrower (in consultation with the Administrative Agent), after giving effect to any such reorganizations and activities, there is no material adverse impact on the value of the (A) Collateral (taken as a whole) granted to the Collateral Agent for the benefit of the Lenders or (B) Guarantees in favor of the Lenders.

The amount of any Investment under this Section 6.03 shall be the initial amount of such Investment less all returns of principal, capital, Dividends and other cash returns therefrom (including, without limitation, any repayments, interest, returns, profits, distributions, income or similar amounts received in cash in respect of any Investment in any Unrestricted Subsidiary and the designation thereof) and less all liabilities expressly assumed by another person in connection with the sale of such Investment, provided that in no instance shall the amount of any Investment under this Section 6.03 be reduced below zero pursuant to this paragraph

Notwithstanding anything herein to the contrary, Investments in Unrestricted Subsidiaries shall only be permitted pursuant to Section 6.03(q).

Section 6.04 Mergers and Consolidations. Wind up, liquidate or dissolve its affairs or consummate a merger or consolidation, except that the following shall be permitted:

(a) Asset Sales or other dispositions in compliance with Section 6.05 (other than clause (d) thereof);

(b) Investments permitted pursuant to Section 6.03 (other than clause (n) thereof);

(c) (x) any Group Member may merge or consolidate with or into the Borrower or any Subsidiary Guarantor (as long as the Borrower is the surviving person in the case of any merger or consolidation involving the Borrower, and such Subsidiary Guarantor is the surviving person in the case of any merger or consolidation involving such Subsidiary Guarantor (other than mergers or consolidations involving the Borrower)) and (y) any Restricted Subsidiary (other than the Borrower) that is not a Guarantor may merge or consolidate with or into any other Restricted Subsidiary that is not a Guarantor;

(d) a merger or consolidation pursuant to, and in accordance with, the definition of "Permitted Acquisition" to the extent necessary to consummate such Permitted Acquisition;

(e) any Restricted Subsidiary (but not the Borrower) may dissolve, liquidate or wind up its affairs at any time; *provided* that (i) such dissolution, liquidation or winding up, as applicable, would not reasonably be expected to have a Material Adverse Effect and (ii) any property or assets of such Restricted Subsidiary that is a Credit Party that exist immediately prior to such dissolution, liquidation or winding up shall be transferred to a Credit Party upon such dissolution, liquidation or winding up; and

(f) the Closing Date Acquisition.

Section 6.05 Asset Sales. Sell, lease, assign, transfer or otherwise dispose of any property, except that the following shall be permitted:

(a) (x) sales, transfers, leases, subleases and other dispositions of inventory in the ordinary course of business, property no longer used or useful in the business or worn out, obsolete, uneconomical, negligible or surplus property by any Group Member in the ordinary course of business, (y) the abandonment, allowance to lapse or other disposition of Intellectual Property that is, in the reasonable business judgment of the Borrower, immaterial or no longer economically practicable to maintain or (z) sales, transfers, leases, subleases and other dispositions of property by any Group Member (including Intellectual Property) that is, in the reasonable business judgment of the Borrower, immaterial or no longer used or useful in the business, or can be exchanged for consideration that is of greater value than such property so long as, in the cause of this clause (a)(z), such sales, transfers, leases and other dispositions do not exceed $500,000 in any fiscal year;

(b) any sale, lease, assignment, transfer or disposition; *provided* that (i) such sale, lease, assignment, transfer or disposition shall be for fair market value (as reasonably determined by the Borrower in good faith), (ii) no Event of Default shall have occurred and be continuing, (iii) the Net Cash Proceeds of such sale, lease, assignment, transfer or disposition shall be applied in accordance with Section 2.10(c), and (iv) with respect to any aggregate consideration received in respect thereof in excess of $6,250,000, at least 75% of the purchase price for all property subject to such sale, lease, assignment, transfer or disposition shall be paid in cash or Cash Equivalents (with assumed liabilities treated as cash and other Designated Noncash Consideration treated as cash) so long as the total Designated Noncash Consideration outstanding at any time does not exceed the greater of $7,500,000 and 3.5% of Annual Recurring Revenue for the most recently ended Test Period in the aggregate;

(c) (x) leases, assignments and subleases of real or personal property in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Group Members and (y) non-exclusive licenses and sublicenses of Intellectual Property otherwise permitted under Section 6.02;

(d) transactions in compliance with Section 6.04 (other than Section 6.04(a));

(e) Investments in compliance with Section 6.03, Liens in compliance with Section 6.02, Dividends in compliance with Section 6.06 and Restricted Debt Payments in compliance with Section 6.09;

(f) sales of any non-core assets (i) acquired in connection with any Permitted Acquisitions or other Investments in compliance with Section 6.03 or (ii) to obtain the approval of an anti-trust authority or required to comply with any order of any other agency, authority or regulatory body or Requirements of Law (including, in each case, in connection with a Permitted Acquisition or other permitted Investment);

(g) sales, discounts, disposals or forgiveness of customer delinquent notes or accounts receivable (including, in all events, the disposition of delinquent accounts receivable pursuant to any factoring arrangement) in the ordinary course of business in connection with settlement, collection or compromise thereof;

(h) use of cash and disposition of Cash Equivalents in the ordinary course of business;

(i) sales, transfers, leases and other dispositions of Real Property to the extent required by any Governmental Authority or otherwise required by any Requirements of law;

(j) sales, transfers, leases and other dispositions (i) to the Borrower or to any other Credit Party, (ii) to any Restricted Subsidiary that is not a Credit Party from another Restricted Subsidiary that is not a Credit Party, or (iii) to any of the Restricted Subsidiaries that are not Credit Parties from a Credit Party, so long as, such sales, transfers, leases and other dispositions pursuant to this clause (j)(iii) do not exceed $10,000,000;

(k) sales, transfers, leases and other dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business;

(l) sales, transfers, leases and other dispositions of property to the extent that such property constitutes an Investment permitted by Section 6.03(g) or another asset received as consideration for the disposition of any asset permitted by this Section 6.05;

(m) sales or dispositions of immaterial Equity Interests to qualify directors where required by applicable Requirements of Law or to satisfy other similar Requirements of Law with respect to the ownership of Equity Interests;

(n) any concurrent purchase and sale, swap or exchange of any asset used or useful in the business of the Borrower and the other Restricted Subsidiaries or in any line of business permitted hereunder, or any combination of any such assets and cash or Cash Equivalents, between the Borrower or a Restricted Subsidiary on one hand and another person on the other;

(o) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Group Member;

(p) the disposition, unwinding or terminating of Hedging Agreements not entered into for speculative purposes or the transactions contemplated thereby;

(q) other sales or dispositions in an amount not to exceed $5,000,000 per fiscal year;

(r) Sale Leaseback Transactions in an amount not to exceed $5,000,000 in the aggregate;

(s) the sale or disposition of Unrestricted Subsidiaries;

(t) the surrender or waiver of contractual rights and settlements, releases or waivers of contractual or litigation claims in the ordinary course of business;

(u) Permitted Liens; and

(v) dispositions scheduled on Schedule 6.05.

To the extent the Required Lenders or all the Lenders, as applicable, waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to a Credit Party) shall be sold automatically free and clear of the Liens created by the Security Documents, and, at the request of the Borrower, the Agents shall take all actions they reasonably deem appropriate in order to effect the foregoing.

Notwithstanding anything herein to the contrary, no Credit Party shall directly or indirectly sell, transfer, assign, grant any exclusive license to, contribute to, or otherwise dispose of, any material Intellectual Property to any Person that is not a Credit Party (including, without limitation, by way of selling, transferring, or otherwise disposing of any Credit Party that owns any such Intellectual Property or has been granted any exclusive license to any such Intellectual Property owned by a Credit Party).

Section 6.06 Dividends. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Group Member, except that the following shall be permitted (subject to the proviso in Section 6.03(o)):

(a) Dividends by any Group Member (x) to the Borrower or any Subsidiary Guarantor and (y) to any Subsidiary that is not a Guarantor; *provided* that any such Dividend under this clause (y) is either (I) paid only in Equity Interests of such Group Member (other than Disqualified Capital Stock) or (II) if paid in cash, is paid to all shareholders on a *pro rata* basis;

(b) for any taxable period for which the Borrower or any Subsidiaries of the Borrower are members of a consolidated, combined, unitary, or similar income tax group for federal and/or applicable state or local income tax purposes or are entities treated as disregarded from any such members for U.S. federal income Tax purposes (a "**Tax Group**") of which the Borrower (or any direct or indirect parent company of the Borrower) is the common parent, the Borrower and the Borrower's Subsidiaries may make Dividends, directly or indirectly, to the Borrower (and the Borrower may pay to any direct or indirect parent company of the Borrower) to permit the parent of such Tax Group to pay any consolidated, combined or similar income Taxes of such Tax Group that are due and payable by the parent of such Tax Group for such taxable period, but only to the extent attributable to the Borrower and/or Subsidiaries of the Borrower, *provided* that Dividends in respect of an Unrestricted Subsidiary shall be permitted only to the extent that Dividends were made by such Unrestricted Subsidiary to such Group Member or any of its Subsidiaries for such purpose; *provided further* that (x) the amount of Dividends permitted to be made under this Section 6.06(b) for any taxable period shall not exceed the lesser of (A) the amount of such Taxes that would have been due and payable by the Borrower and/or the applicable Subsidiaries of the Borrower had the Borrower and/or such Subsidiaries of the Borrower, as applicable, been a stand-alone corporate taxpayer (or a stand-alone corporate Tax Group) and (B) the actual Tax liability of the Borrower for such taxable period, (y) to the extent that such Taxes are attributable to Subsidiaries of the Borrower that are not Credit Parties, such Taxes must be funded by such Subsidiaries and (z) if the Borrower receives a refund from a Governmental Authority in respect of any amounts paid pursuant to this Section 6.06(b), any subsequent distributions pursuant to this Section 6.06(b) shall be reduced by the amount of such refund;

(c) repurchases of Equity Interests deemed to occur upon the exercise of stock options if the Equity Interests represent a portion of the exercise price thereof and satisfaction of any tax obligations related thereto;

(d) the fees, payments and expenses made in connection with the Transactions or used to fund amounts owed to equityholders in connection therewith, in each case to the extent permitted by Section 6.07 (other than clause (a) thereof);

(e) [reserved];

(f) Dividends made solely in Equity Interests of the Borrower (other than Disqualified Capital Stock);

(g) so long as no Event of Default shall have occurred and be continuing or would immediately result therefrom, Dividends to the extent that payment for such Dividends is made solely with cash contributions from the substantially concurrent issuance of Equity Interests (other than Disqualified Capital Stock and Equity Cure Contributions) of the Borrower, which are Not Otherwise Applied;

(h) [reserved];

(i) so long as no Default or Event of Default shall have occurred and be continuing on the date of declaration of any such Dividend or would result therefrom, the Borrower may make Dividends with respect to any Equity Interest in any amount of up to 6% per annum of the market capitalization of the applicable public filing entity and its Subsidiaries; and

(j) so long as no Default or Event of Default shall have occurred and be continuing or would immediately result therefrom, additional Dividends may be made to any equity holder of the Borrower in an aggregate amount not to exceed $10,000,000.

Section 6.07 Transactions with Affiliates. Except as otherwise permitted hereunder, enter into, directly or indirectly, any transactions, whether or not in the ordinary course of business, with any Affiliate of any Group Member (other than among the Borrower and any Guarantor or any entity that becomes a Subsidiary Guarantor or a Borrower as a result of such transactions), other than on terms and conditions at least as favorable to such Group Member (or, in the case of a transaction between a Credit Party and a Subsidiary that is not a Credit Party, such Credit Party) as would reasonably be obtained by such Group Member at that time in a comparable arm's-length transaction with a person other than an Affiliate (as reasonably determined by the Borrower), except that the following shall be permitted:

(a) transactions among the Borrower and/or any Restricted Subsidiaries that are Guarantors (or transactions solely among Restricted Subsidiaries that are not Guarantors) which are not otherwise prohibited by this Agreement or the Loan Documents;

(b) director, officer and employee compensation (including bonuses) and other benefits (including, without limitation, retirement, health, incentive equity and other benefit plans) and expense reimbursement and indemnification arrangements and severance agreements;

(c) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods and services, in each case in the ordinary course of business and otherwise permitted by the Loan Documents;

(d) transactions in furtherance of consummating any reorganization or other activity related to tax planning otherwise permitted hereunder to the extent that after giving effect thereto, in the reasonable business judgment of the Borrower (in consultation with the Administrative Agent), there is no material adverse impact on the value of the (A) Collateral (taken as a whole) granted to the Collateral Agent for the benefit of the Lenders or (B) Guarantees in favor of the Lenders;

(e) any transaction with an Affiliate where the only consideration paid by any Credit Party is Qualified Capital Stock of the Borrower;

(f) agreements relating to Intellectual Property not interfering in any material respect with the ordinary conduct of business of the Credit Parties or materially impairing the security interest granted under the Security Agreement therein held by the Collateral Agent;

(g) any other agreement, arrangement or transaction as in effect on the Closing Date and listed on Schedule 6.07, and any amendment or modification with respect to such agreement, arrangement or transaction, and the performance of obligations thereunder, so long as such amendment or modification is not materially adverse to the interests of the Lenders;

(h) the Transactions as contemplated by the Transaction Documents, including the payment of any fees, costs or expenses related to such Transactions;

(i) transactions entered into by any Unrestricted Subsidiary with an Affiliate prior to the re-designation of any such Unrestricted Subsidiary as a Restricted Subsidiary pursuant to the definition of "Unrestricted Subsidiary"; provided that such transactions were not entered into in contemplation of such re-designation; and

(j) the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of its obligations under the terms of, the Closing Date Acquisition Agreement and any stockholders or similar agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any amendment thereto or similar agreements, transactions or arrangements which it may enter into thereafter; provided, however, that the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of obligations under any future amendment or replacement agreement to any such existing agreement or under any similar agreement, transaction or arrangement entered into after the Closing Date shall only be permitted by this clause (l) to the extent that the terms of any such amendment or new agreement, transaction or arrangement are not otherwise materially disadvantageous to the Lenders when taken as a whole as compared to the applicable agreement as in effect on the Closing Date.

Section 6.08 Financial Covenants.

(a) Minimum Liquidity. Permit Liquidity, as of the last day of each fiscal quarter of the Borrower, commencing with the fiscal quarter of the Borrower ended June 30, 2021, to be less than $20,000,000.

(b) Maximum First Lien Net Annual Recurring Revenue Leverage Ratio. Commencing with the fiscal quarter of the Borrower ended June 30, 2021, permit the First Lien Net Annual Recurring Revenue Leverage Ratio as of the last day of and for any Test Period set forth below to be greater than the ratio set forth below opposite such Test Period below:

Test Period Ended	First Lien Net Annual Recurring Revenue Leverage Ratio
June 30, 2021	2.60:1.00
September 30, 2021	2.35:1.00
December 31, 2021	2.20:1.00
March 31, 2022	2.10:1.00
June 30, 2022	2.00:1.00
September 30, 2022	1.90:1.00
December 31, 2022	1.80:1.00
March 31, 2023	1.70:1.00
June 30, 2023	1.60:1.00
September 30, 2023	1.50:1.00
December 31, 2023	1.40:1.00
March 31, 2024 and thereafter	1.30:1.00

Section 6.09 Prepayments of Certain Indebtedness; Modifications of Organizational Documents and Other Documents, etc.

(a) Directly or indirectly make any voluntary or optional payment or prepayment of, or repurchase, redemption or acquisition for value of, or any prepayment or redemption as a result of any Asset Sale, change of control or similar event of, any Indebtedness for borrowed money outstanding under documents evidencing any (x) Indebtedness that is secured on a junior lien basis to the Obligations, (y) Indebtedness that is unsecured or (z) Subordinated Indebtedness ("**Restricted Debt Payment**") *except* (A) [reserved], (B) in connection with any Permitted Refinancing thereof; (C) prepaying, redeeming, purchasing, defeasing or otherwise satisfying prior to the scheduled maturity thereof (or setting apart any property for such purpose) (1) in the case of any Group Member that is not a Credit Party, any Indebtedness owing by such Group Member to any other Group Member, (2) otherwise, any Indebtedness owing to any Credit Party and (3) so long as no Event of Default is continuing or would immediately result therefrom, any mandatory prepayments of Indebtedness incurred under clauses (b) and (e) of Section 6.01 and any Permitted Refinancing thereof, (D) making regularly scheduled payments of interest in respect of such Indebtedness (other than Indebtedness owing to any Affiliate of the Borrower other than a Credit Party or (if owed by a Restricted Subsidiary that is not a Credit Party) any Restricted Subsidiary) and payments of fees, expenses and indemnification obligations thereunder but only to the extent, in each case, not restricted by the Intercreditor Agreement or subordination agreement with respect thereto, (E) so long as no Event of Default shall have occurred and be continuing or would immediately result therefrom, to the extent that such payment is made solely with cash contributions from the issuance of Equity Interests (other than Disqualified Capital Stock or Equity Cure Contributions) of the Borrower, which are and Not Otherwise Applied and are received substantially concurrently with such Restricted Debt Payment, (F) converting (or exchanging) any Indebtedness to (or for) Qualified Capital Stock of the Borrower, (G) any AHYDO catch-up payments with respect thereto, (H) so long as no Event of Default has occurred and is then continuing, making prepayments, redemptions, purchases, defeasance or other satisfaction of Indebtedness in an aggregate amount not to exceed the greater of $10,000,000 and 4.8% of Annual Recurring Revenue for the most recently ended Test Period, (I) [reserved], (J) any payments of intercompany obligations permitted under an intercompany subordination agreement or the other subordination terms approved by the Administrative Agent pursuant to Section 6.01(l) hereunder, and (K) in connection with the refinancing or exchange of any Indebtedness acquired in connection with a Permitted Acquisition or similar Investment to the extent such Indebtedness was not incurred in contemplation of such Permitted Acquisition or similar Investment to the extent such refinancing is permitted hereunder;

(b) amend, modify or change in any manner material and adverse to the interests of the Lenders any term or condition of the Senior Notes Indebtedness, if any without the consent of the Required Lenders (not to be unreasonably withheld, conditioned or delayed); and

(c) terminate, amend, modify or change any of its Organizational Documents other than any such amendments, modifications or changes or such new agreements which are not materially adverse to the interests of the Lenders.

Section 6.10 No Further Negative Pledge; Subsidiary Distributions. Enter into any agreement, instrument, deed or lease which (a) prohibits or limits the ability of any Credit Party to create, incur, assume or suffer to exist any Lien upon any of their respective properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation or (b) prohibits, restricts or imposes any condition upon the ability of any Restricted Subsidiary that is not a Credit Party from paying dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any Restricted Subsidiary or to Guarantee Indebtedness of any Restricted Subsidiary, in each case, except the following: (i) this Agreement and the other Loan Documents, and any documents governing any Incremental Facility or, in each case, any Credit Agreement Refinancing Indebtedness in respect thereof; (ii) covenants in documents creating Liens permitted by Section 6.02 prohibiting further Liens on the properties encumbered thereby; (iii) any other agreement that does not restrict in any manner (directly or indirectly) Liens created pursuant to the Loan Documents on any Collateral securing the Secured Obligations and does not require the direct or indirect granting of any Lien securing any Indebtedness or other obligation by virtue of the granting of Liens on or pledge of property of any Credit Party to secure the Secured Obligations; (iv) customary covenants and restrictions in any indenture, agreement, document, instrument or other arrangement relating to non-material assets or business of any Subsidiary existing prior to the consummation of a Permitted Acquisition in which such Subsidiary was acquired (and not created in contemplation of such Permitted Acquisition); (v) customary restrictions on cash or other deposits; (vi) net worth provisions in leases and other agreements (including receivables facilities) entered into by a Group Member in the ordinary course of business; (vii) contractual encumbrances or restrictions existing on the Closing Date; and (viii) any prohibition or limitation that (I) exists pursuant to applicable Requirements of Law, (II) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.05, stock sale agreement, joint venture agreement, sale/leaseback agreement, purchase agreements, or acquisition agreements (including by way of merger, acquisition or consolidation) entered into by a Credit Party or any Subsidiary solely to the extent pending the consummation of such transaction, which covenant or restriction is limited to the assets that are the subject of such agreements, (III) restricts subletting or assignment of leasehold interests contained in any Lease governing a leasehold interest of a Credit Party or a Subsidiary, or (IV) is imposed by any amendments or refinancings that are otherwise permitted by the Loan Documents of the contracts, instruments or obligations referred to in immediately preceding clauses (i) through (viii) of this Section 6.10; *provided* that such amendments and refinancings are no more materially restrictive with respect to such prohibitions and limitations than those prior to such amendment or refinancing.

Section 6.11 Nature of Business. The Borrower and its Restricted Subsidiaries will not engage in any material line of business other than those material lines of business substantially similar to the lines of business conducted by the Borrower and its Restricted Subsidiaries on the Closing Date or any business reasonably related, similar, corollary, complementary, incidental or ancillary thereto.

Section 6.12 Fiscal Year. Change its fiscal year end date to a date other than December 31, other than with the previous written consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed).

ARTICLE VII
GUARANTEE

Section 7.01 The Guarantee. Each Guarantor and the Borrower hereby jointly and severally guarantees, as a primary obligor and not as a surety, to each Secured Party and its successors and permitted assigns, the prompt payment in full when due (whether at stated maturity, by required prepayment, declaration, demand, or acceleration or otherwise) of the principal of and interest on (including any interest, fees, costs or charges that would accrue but for the provisions of Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) the Loans made by the Lenders to, and the Notes held by each Lender of, the Borrower, and all other Secured Obligations from time to time owing to the Secured Parties by any Credit Party under any Loan Document strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). Each Guarantor and the Borrower hereby jointly and severally agree that if, in the case of such Guarantor, the Borrower or any other Guarantor, and in the case of the Borrower, any Guarantor, shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Borrower and the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 7.02 Obligations Unconditional. The obligations of the Guarantors and, as applicable, the Borrower under Section 7.01 shall constitute a guaranty of payment and performance (and not collection) of Guaranteed Obligations and, to the fullest extent permitted by applicable Requirements of Law, are absolute, irrevocable and unconditional, and joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (except for Payment in Full of the Guaranteed Obligations). Without limiting the generality of the foregoing and subject to applicable law, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Credit Parties hereunder, which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(a) at any time or from time to time, without notice to the Credit Parties, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted (except for Payment in Full of the Guaranteed Obligations);

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(d) any Lien or security interest granted to, or in favor of, any Lender, Agent or other Secured Party as security for any of the Guaranteed Obligations shall fail to be valid and perfected;

(e) any exercise of remedies with respect to any security for the Guaranteed Obligations (including, without limitation, any collateral, including the Collateral securing or purporting to secure any of the Guaranteed Obligations) at such time and in such order and in such manner as the Administrative Agent and the Secured Parties may decide and whether or not every aspect thereof is commercially reasonable and whether or not such action constitutes an election of remedies and even if such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy that any Credit Party would otherwise have and without limiting the generality of the foregoing but other than with respect to any rights expressly set forth herein or in any other Loan Document, each Credit Party hereby expressly waives any and all benefits which might otherwise be available to such Credit Party in its capacity as a guarantor under applicable law; or

(f) the release of any other Guarantor pursuant to Section 7.09 or 9.10.

The Credit Parties hereby expressly waive, to the extent permitted by law, diligence, presentment, demand of payment, protest and all notices whatsoever (other than any notices expressly required hereby or by any other Loan Document), and any requirement that any Secured Party exhaust any right, power or remedy or proceed against the Borrower or any other Credit Party under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Credit Parties waive, to the extent permitted by law, any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between the Borrower and/or the Guarantors on the one hand and the Secured Parties on the other hand shall likewise be presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance of the Guaranteed Obligations without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by Secured Parties, and the obligations and liabilities of the Credit Parties hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against the Borrower or any other Credit Party or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Credit Parties and the successors and assigns thereof, and shall inure to the benefit of the Lenders, and their respective successors and permitted assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Without limitation of the foregoing, each Credit Party waives all rights and defenses arising out of any applicable Laws and applicable case law to the effect that a guarantor may be discharged if the beneficiary of the guaranty alters the original obligation of the principal, fails to inform the guarantor of material information pertinent to the principal or any collateral, elects remedies that may impair the subrogation rights of the guarantor against the principal or that may impair the value of any collateral, fails to accord the guarantor the protections afforded a debtor under Article 9 of applicable Uniform Commercial Code or otherwise takes or fails to take any action that prejudices such Credit Party. Each Credit Party waives any rights it may have to require the Administrative Agent or any other Secured Party first to take any specific or particular action under the Loan Documents (or with respect to the Collateral). If the Administrative Agent or any other Secured Party decides to proceed first to exercise any other remedy or right, or to proceed against another person or any collateral, the Administrative Agent or such Secured Party shall retain all of its rights under the Loan Documents. Each Credit Party that is a Guarantor waives any right it has to terminate or revoke the continuing nature of the Guaranty (and its application to any Obligations covered by such Guaranty arising after any attempt to terminate the Guaranty).

Section 7.03 Reinstatement. The obligations of the Credit Parties under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or other Credit Party in respect of the Guaranteed Obligations is rescinded, must be otherwise restored by any holder of any of the Guaranteed Obligations or is returned on the reasonable advice of counsel, in each case, as a result of any proceedings in bankruptcy or reorganization or pursuant to a Debtor Relief Law.

Section 7.04 Subrogation; Subordination. Each Credit Party hereby agrees that, until the Obligations have been Paid in Full and the Commitments have been terminated or expired, it shall subordinate and not exercise any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation, contribution or otherwise, against the Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations (provided however, that such rights and remedies shall remain waived and released at any time that any Agent (or any of the Secured Parties (with or through their designees)) has acquired all or any portion of the Collateral by credit bid, strict foreclosure or through any other exercise of remedies available pursuant to the Loan Documents). Any Indebtedness of any Credit Party permitted pursuant to Section 6.01(l) shall be subordinated to such Credit Party's Guaranteed Obligations pursuant to customary intercreditor arrangements satisfactory to the Administrative Agent; *provided* that upon the Payment in Full of the Guaranteed Obligations and the expiration or termination of the Commitments of the Lenders under this Agreement, without any further action by any person, the Guarantors shall be automatically subrogated to the rights of the Administrative Agent and the Lenders, and may exercise their rights of contribution pursuant to Section 7.10, in each case to the extent of any payment hereunder.

Section 7.05 Remedies. Subject to the terms of any applicable Intercreditor Agreement, the Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of the Borrower under this Agreement and the Notes, if any, may be declared to be forthwith due and payable as provided in Section 8.01 (and shall be deemed to have become automatically due and payable in the circumstances provided in Section 8.01) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against the Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by the Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

Section 7.06 Instrument for the Payment of Money. Each Guarantor and the Borrower hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor or the Borrower in the payment of any moneys due hereunder, shall have the right to bring a motion or action under New York CPLR Section 3213.

Section 7.07 Continuing Guarantee. The guarantee in this Article VII is a continuing guarantee of payment, and shall apply to all Guaranteed Obligations whenever arising.

Section 7.08 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate, limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor or the Borrower under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor or the Borrower, any Credit Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the right of contribution established in Section 7.10) that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 7.09 Release of Guarantors. If, in compliance with the terms and provisions of the Loan Documents, all or substantially all of the Equity Interests of any Subsidiary Guarantor are sold or otherwise transferred (including without limitation by way of merger, consolidation or amalgamation) (a "**Transferred Guarantor**") to a person or persons, none of which is the Borrower or a Guarantor, such Transferred Guarantor shall, effective immediately upon the consummation of such sale or transfer, be automatically released from its obligations under this Agreement (including under Section 10.03 hereof) and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document and the pledge of such Equity Interests to the Collateral Agent pursuant to the Security Agreements shall be automatically released, and, the Collateral Agent shall (at the expense and request of the Borrower) take such actions as are necessary to effect each release described in this Section 7.09 in accordance with the relevant provisions of the Security Documents; *provided* that in each case of this Section 7.09, upon the Collateral Agent's reasonable request, the Borrower shall have delivered to the Administrative Agent and Collateral Agent a certificate of a Responsible Officer of the Borrower certifying that any such transaction has been consummated in compliance with the Credit Agreement and the other Loan Documents and that such release is permitted hereby.

Section 7.10 Right of Contribution. Each Guarantor hereby agrees that to the extent that such Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment, in an amount not to exceed the highest amount that would be valid and enforceable and not subordinated to the claims of other creditors as determined in any action or proceeding involving any state corporate, limited partnership or limited liability law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally. Each such Guarantor's right of contribution shall be subject to the terms and conditions of Section 7.04. The provisions of this Section 7.10 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.01 Events of Default. For so long as this Agreement remains outstanding, upon the occurrence and during the continuance of the following events ("**Events of Default**"):

(a) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof (including the Maturity Date) or at a date fixed for mandatory prepayment thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Group Member in any Loan Document, Borrowing Request or any representation, warranty, statement or information contained in any certificate furnished by or on behalf of any Group Member pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made or deemed made, and such false or misleading representation, warranty, statement or information, to the extent capable of being cured, shall continue to be false, misleading or otherwise unremedied, or shall not be waived, for a period of thirty (30) days (provided that such 30-day grace period shall not apply to the Specified Representations);

(d) default shall be made in the due observance or performance by any Group Member of any covenant, condition or agreement contained in Section 5.02(a) or Section 5.03(a) (only with respect to legal existence in the Borrower's state of organization), Section 5.08, Section 5.10, Section 5.12, Section 5.15 or in Article VI; *provided*, that an Event of Default under Section 6.08 is subject to a cure pursuant to Section 8.03;

(e) default shall be made in the due observance or performance by any Group Member of any covenant, condition or agreement contained in any Loan Document other than those specified in clauses (a), (b) or (d) immediately above or those specified in clause (m) below and such default shall continue unremedied or shall not be waived for a period of thirty (30) days; provided that, in the first instance a default continues unremedied or is not waived for such thirty (30) day period, an additional period of thirty (30) days from the end of such initial period shall be provided in order to remedy such default before such default becomes an Event of Default under this clause (e);

(f) any Credit Party shall fail to (i) pay any principal or interest, due in respect of the Senior Notes Indebtedness or any other Indebtedness (other than the Obligations, any letters of credit set forth on Schedule 6.01(b) and intercompany Indebtedness), when and as the same shall become due and payable beyond any applicable grace period, or (ii) observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness, if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf to cause (with or without the giving of notice but taking into account any applicable grace periods or waivers), such Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor; *provided* that this clause (ii) shall not apply to (x) secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is permitted under this Agreement and such Indebtedness is repaid in accordance with its terms) or (y) Indebtedness that is convertible into Equity Interests and converted into Equity Interests in accordance with its terms and such conversion is permitted hereunder; *provided*, *further*, that no Event of Default shall occur pursuant to this clause (f) unless the aggregate outstanding principal amount of any such Indebtedness (other than the Senior Notes Indebtedness or any other Indebtedness that is subject to a pari passu Intercreditor Agreement with the Term Loans) referred to in clauses (i) and (ii) exceeds $10,000,000 (*provided* that, such failure is unremedied and is not waived by the holders of such Indebtedness);

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Group Member (other than any Immaterial Subsidiary), or of all or substantially all of the property of any Group Member (other than any Immaterial Subsidiary), under Title 11 of the U.S. Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Group Member (other than any Immaterial Subsidiary) or for all or substantially of the property of any Group Member (other than any Immaterial Subsidiary); or (iii) the winding-up or liquidation of any Group Member (other than any Immaterial Subsidiary); and such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Group Member (other than any Immaterial Subsidiary) shall (i) voluntarily commence any proceeding, or file any petition, seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Group Member (other than any Immaterial Subsidiary) or for a substantial part of the property of any Group Member (other than any Immaterial Subsidiary); (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability, or fail generally to, pay its debts as they become due; or (vii) take any corporate (or equivalent) action for the purpose of effecting any of the foregoing;

(i) there is entered against any Credit Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) final, non-appealable judgments or orders for the payment of money in an aggregate amount in excess of $10,000,000 (to the extent not covered by independent third-party insurance or a third-party indemnification agreement) and such judgments or orders shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days or any action shall be legally taken by a judgment creditor to levy upon properties of any Credit Party or any Restricted Subsidiary (other than any Immaterial Subsidiary) to enforce any such judgment (other than the filing of a judgment Lien);

(j) any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 6.04 or Section 6.05) or solely as a result of acts or omissions by the Administrative Agent or any Lender, or the Payment in Full of all of the Obligations and termination of the Commitments, ceases to be in full force and effect or ceases (in the case of any Security Document) to create a valid and perfected first priority lien (subject to Permitted Liens) on the Collateral covered thereby; or any Credit Party contests in writing the validity or enforceability of any material provision of any Loan Document; or any Credit Party denies in writing that it has any or further liability or obligation under any material provision of any Loan Document (other than as a result of Payment in Full of the Obligations and termination of the Commitments), or purports in writing to revoke or rescind any material provision of any Loan Document;

(k) there shall have occurred an ERISA Event that, when taken either alone or together with all other ERISA Events, would reasonably be expected to have a Material Adverse Effect;

(l) there shall have occurred a Change in Control; or

(m) default shall be made in the due observance or performance by any Group Member of any covenant, condition or agreement contained in Section 5.01 and such default shall continue unremedied or shall not be waived for a period of ten (10) days after the applicable deadline for delivery set forth in Section 5.01.

then, and in every such event (other than an event with respect to a Credit Party described in clause (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, with the prior consent of the Required Lenders, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments (if any) and (ii) declare the Loans and then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees and all other Obligations accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event, with respect to the events described in clause (g) or (h) above with respect to a Credit Party, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees and all other Obligations accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower and the Guarantors, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.02 Application of Proceeds. Subject to the terms of any applicable Intercreditor Agreement, the proceeds received by the Administrative Agent or the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral or the Guarantees pursuant to the exercise by the Administrative Agent or the Collateral Agent, as the case may be, in accordance with the terms of the Loan Documents, of its remedies shall be applied, in full or in part, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Administrative Agent or the Collateral Agent, as the case may be, as follows:

(a) *first*, to the payment of all reasonable and documented costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Administrative Agent, the Collateral Agent and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent or the Collateral Agent in connection therewith and all amounts for which the Administrative Agent or the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing and unpaid until paid in full;

(b) *second*, to the payment of all other reasonable and documented costs and expenses of such sale, collection or other realization (including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith), together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations (other than principal and any premium thereon), in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) *fourth*, to the payment in full in cash, pro rata, of the principal amount of the Obligations; and

(e) *fifth*, the balance, if any, to the person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in the preceding sentences of this Section 8.02, the Credit Parties shall remain liable, jointly and severally, for any deficiency.

Section 8.03 Equity Cure

(a) Notwithstanding anything to the contrary contained in Section 8.01, but subject to Section 8.03(b), solely for the purpose of determining whether an Event of Default has occurred pursuant to Section 6.08(b) (the "**Recurring Revenue Covenant**") as of the end of and for any Test Period ending on the last day of any fiscal quarter with respect to which either Recurring Revenue Covenant is tested (such fiscal quarter, a "**Recurring Revenue Cure Quarter**"), the Borrower shall have the right to issue equity, directly or indirectly (which equity shall be common equity, perpetual preferred equity (provided that such perpetual preferred equity shall not have any redemption event or require any cash payments prior to the date that is 91 days after the Latest Maturity Date and shall not be Disqualified Capital Stock), or shall otherwise be in a form reasonably acceptable to the Administrative Agent) in exchange for cash, on or after the first day of such Recurring Revenue Cure Quarter and on or prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered pursuant to Section 5.01(a) or (b), as applicable, with respect to such Recurring Revenue Cure Quarter or the fiscal year ending on the last day of such Recurring Revenue Cure Quarter, as applicable (the "**Recurring Revenue Cure Expiration Date**") and such cash will, if so designated by the Borrower, decrease Consolidated Total Funded Indebtedness by way of application to prepay the Term Loans in accordance with Section 2.10(b), for purposes of determining compliance with the Recurring Revenue Covenant as of the end of and for the Test Period ending on the last day of such Recurring Revenue Cure Quarter applied to decrease Consolidated Total Funded Indebtedness (any such equity contribution, an "**Equity Cure Contribution**," and the amount of such Equity Cure Contribution, the "**Cure Amount**"); *provided* that (i) cash proceeds of such Equity Cure Contribution shall not constitute Unrestricted Cash for "cash netting" purposes, (ii) such Equity Cure Contributions shall be applied to prepay the Term Loans in accordance with Section 2.10(b), and (iii) such Equity Cure Contribution is Not Otherwise Applied. All Equity Cure Contributions shall be disregarded for all purposes of this Agreement other than inclusion in the calculation of Consolidated Total Funded Indebtedness for the purpose of determining compliance with the Recurring Revenue Covenant as of the end of and for the Test Period ending on the last day of such Recurring Revenue Cure Quarter, including being disregarded for purposes of any baskets with respect to the covenants contained in Article VI (other than Section 6.08). Notwithstanding anything to the contrary contained in Section 8.01, (A) upon receipt of the Cure Amount by the Borrower in an amount necessary to cause the Borrower to be in compliance with the Recurring Revenue Covenant as of the end of and for the Test Period ending on the last day of such applicable Recurring Revenue Cure Quarter, the Recurring Revenue Covenant shall be deemed satisfied and complied with as of the end of and for such Test Period with the same effect as though there had been no failure to comply with the Recurring Revenue Covenant and any Default or Event of Default related to any failure to comply with the Recurring Revenue Covenant shall be deemed not to have occurred for purposes of the Loan Documents and (B) upon receipt by the Administrative Agent of a notice from the Borrower stating the Borrower's intent to cure such Event of Default ("Notice of Intent to Cure") prior to the making of an Equity Cure Contribution (but in any event no later than the applicable Cure Expiration Date): (i) no Default or Event of Default shall be deemed to have occurred on the basis of any failure to comply with the Recurring Revenue Covenant unless such failure is not cured by the making of an Equity Cure Contribution on or prior to the applicable Cure Expiration Date, (ii) none of the Administrative Agent, the Collateral Agent or any Lender shall exercise any of the remedial rights otherwise available to it upon an Event of Default, including the right to accelerate the Loans, to terminate Commitments or to foreclose on the Collateral solely on the basis of an Event of Default having occurred as a result of a violation of Section 6.08(b) unless the Equity Cure Contribution is not made on or before the Recurring Revenue Cure Expiration Date and (iii) if the Equity Cure Contribution is not made on or before the Recurring Revenue Cure Expiration Date, such Event of Default or potential Event of Default shall spring into existence after such time.

(b) There shall be (i) no more than five (5) Equity Cure Contributions made during the term of this Agreement and (ii) no more than two (2) Equity Cure Contributions made during any four consecutive fiscal quarters. No Equity Cure Contribution shall be any greater than the minimum amount required to cause the Borrower to be in compliance with the Recurring Revenue Covenant in the applicable Recurring Revenue Cure Quarter.

ARTICLE IX
THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 9.01 Appointment and Authority.

(a) Appointment of Administrative Agent. Each Lender hereby appoints Owl Rock (together with any successor Administrative Agent pursuant to Section 9.09) as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Credit Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.01(g) or (h) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent, the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 10.04(b) with respect to the Register and in Section 9.11 with respect to the other Secured Parties), with duties that are entirely administrative in nature, notwithstanding the use of the defined terms "Administrative Agent" and "Collateral Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

Section 9.02 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Required Lenders (or, if expressly required hereby, such greater or other proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

Section 9.03 Use of Discretion.

(a) No Action without Instructions. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, such greater or other proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent or its counsel, contrary to any Loan Document or applicable Requirements of Law.

Section 9.04 Delegation of Rights and Duties

. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article IX to the extent provided by the Administrative Agent.

Section 9.05 Reliance and Liability.

(a) The Administrative Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 10.04(b), (ii) rely on the Register to the extent set forth in Section 10.04(c), (iii) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Credit Party) and (iv) rely and act upon any document and information (including those transmitted by electronic or other information transmission systems) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties; and

(b) None of the Administrative Agent and its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Credit Parties hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Party or any Credit Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Credit Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Credit Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender and the Borrower hereby waives and agrees not to assert (and each of the Borrower shall cause each other Credit Party to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

Section 9.06 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to acquire Equity Interests in, and/or engage in any kind of business with, any Credit Party or any Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender" and "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders respectively.

Section 9.07 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document (including the Information) solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conduct its own independent investigation of the financial condition and affairs of each Credit Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party or any Affiliate of any Credit Party that may come in to the possession of the Administrative Agent or any of its Related Parties.

Section 9.08 Expenses, Indemnification.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Credit Party) promptly upon demand for such Lender's pro rata share with respect to the Commitments of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Credit Party) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, execution, delivery, administration, modification, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Parties (to the extent not reimbursed by any Credit Party), from and against such Lender's aggregate pro rata share with respect to the liabilities (including to the extent not indemnified pursuant to Section 9.08(c), Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Parties in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any other Transaction Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Parties under or with respect to any of the foregoing; provided, however, that no Lender shall be liable to the Administrative Agent or any of its Related Parties to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(c) To the extent required by any applicable Requirements of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If any payment is made to any Lender by the Administrative Agent without the applicable withholding Tax being withheld from such payment and the Administrative Agent has paid over the applicable withholding Tax to the IRS or any other Governmental Authority, or the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. The Administrative Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which the Administrative Agent is entitled to indemnification from such Lender under this Section 9.08(c).

Section 9.09 Resignation of Administrative Agent.

(a) The Administrative Agent may resign as Administrative Agent (which resignation shall also be effective in respect of its role as Collateral Agent unless the Administrative Agent otherwise agrees in writing) at any time by delivering notice of such resignation to the Lenders and the Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective in accordance with the terms of this Section 9.09; *provided* that any such notice provided by the Administrative Agent shall provide for at least thirty (30) days prior notice of such resignation unless the Borrower shall expressly consent in writing to a shorter notice period in its sole discretion. If the Administrative Agent or Collateral Agent or a controlling Affiliate of the Administrative Agent or the Collateral Agent is subject to an Agent-Related Distress Event, the Borrower may remove such Agent from such role upon ten (10) days' written notice to the Lenders. If the Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent and Collateral Agent, if applicable, which is not a Disqualified Institution, which shall be either (i) a Lender or (ii) a bank with an office in the United States and having capital surplus aggregating in excess of $300,000,000, or an Affiliate of any such bank with an office in the United States, with any prohibited appointment to be absolutely void *ab initio*. If after 30 days after the date of the retiring Administrative Agent's notice of resignation, no successor Administrative Agent and Collateral Agent, if applicable, has been appointed by the Required Lenders and consented to by the Borrower that has accepted such appointment, then the retiring Administrative Agent (other than to the extent subject to an Agent-Related Distress Event) may, on behalf of the Lenders, appoint a successor Administrative Agent and Collateral Agent, if applicable. Each appointment under this clause (a) shall be subject to the prior consent of the Borrower, which may not be unreasonably withheld, conditioned or delayed but shall not be required during the continuance of a Default or Event of Default under Section 8.01(a), (b), (g), or (h).

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under Section 9.03, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent and Collateral Agent, if applicable, under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents.

Section 9.10 Release or Subordination of Collateral or Guarantors; Entry into Intercreditor Agreements. Each Lender hereby consents to the automatic release provisions contained in this Agreement and the other Loan Documents and hereby directs the Administrative Agent and Collateral Agent, as applicable, to do the following:

(a) release any Subsidiary Guarantor from its guaranty of any Obligation of any Credit Party in accordance with Section 7.09 (including, for the avoidance of doubt, if all of the Equity Interests of such Subsidiary Guarantor owned by any Credit Parties are sold in a sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such sale, such Subsidiary Guarantor would not be required to guaranty any Secured Obligations pursuant to Section 5.10); *provided* that, notwithstanding anything herein to the contrary, the Administrative Agent shall not be authorized to release any Guaranty in the event that a Subsidiary becomes an Excluded Subsidiary by virtue of a conveyance, sale, transfer or other disposition of Equity Interests unless such disposition is a good faith conveyance, sale, transfer or other disposition to a bona-fide unaffiliated third party whose primary purpose is not the release of such Guarantee;

(b) release or, in the case of clause (ii), release or subordinate, any Lien held by the Collateral Agent for the benefit of the Secured Parties against (i) any Collateral that is sold or otherwise disposed of by a Credit Party in a sale or disposition permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 5.10 after giving effect to such sale or disposition have been granted (and the Collateral Agent may rely conclusively on a certificate to that effect provided by any Credit Party upon its reasonable request without further inquiry, any which such certificate of a Responsible Officer of a Credit Party shall be conclusive evidence that such requirements have been satisfied), (ii) any property subject to a Lien permitted hereunder in reliance upon Section 6.02(c) (to the extent applying to Liens on Permitted Refinancings described therein), (k), (m), (v), or (aa) (as it pertains to Section 6.01(o)(i)) to the extent required by the documents evidencing such Lien, (iii) all of the Collateral and all Credit Parties, in the case of this clause (iii) upon the Payment in Full of the Obligations, (iv) in connection with the designation of any Restricted Subsidiary as an Unrestricted Subsidiary as permitted hereunder (including, in connection with the property of such Unrestricted Subsidiary or the Equity Interests thereof), (v) any Collateral to the extent such Collateral is comprised of property leased to a Credit Party, upon termination or expiration of such lease, (vi) any Collateral if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.02), (vii) any Collateral as required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Loan Documents, or (viii) any Property if such Property constitutes Excluded Property;

(c) subordinate any Lien on any property granted to or held by the Administrative Agent or Collateral Agent under any Loan Document to the holder of any Lien on such property that is expressly permitted to be senior to the Liens securing the Secured Obligations pursuant to Section 6.02;

(d) release any Guarantor from its obligations under the Guarantee if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted under the Loan Documents; and

(e) enter into any Intercreditor Agreement or other subordination agreement it deems reasonable in connection with any refinancing Indebtedness (including, without limitation, Permitted Pari Passu Refinancing Debt and Permitted Unsecured Refinancing Debt), or other obligations permitted hereunder, and that if any such Intercreditor Agreement or other subordination agreement is posted to the Lenders three (3) Business Days before being executed and the Required Lenders shall not have objected to such Intercreditor Agreement or other subordination agreement, the Required Lenders shall be deemed to have agreed that the Administrative Agent's or the Collateral Agent's entry into such Intercreditor Agreement or other subordination agreement is reasonable and to have consented to such Intercreditor Agreement or other subordination agreement and such Agent's execution thereof.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release and/or evidence the release of the guaranties, Liens or Guarantors, as applicable, when and as directed in this Section 9.10. Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Credit Parties in respect of) all interests retained by the Credit Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral (to the extent otherwise applicable pursuant to the terms of the Loan Documents, and for the avoidance of doubt other than in the case of any Excluded Property) except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders hereby irrevocably agree that any Restricted Subsidiary that is a Guarantor shall be automatically released from the Guarantees upon consummation of any transaction permitted by this Agreement resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary or upon becoming an Excluded Subsidiary (other than as a result of such Subsidiary ceasing to constitute a Wholly-Owned Restricted Subsidiary). The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to, and the Administrative Agent and the Collateral Agent agree to, execute and deliver any instruments, documents and agreements necessary or desirable or reasonably requested by the Borrower to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this Section 9.10, all without the further consent or joinder of any Lender and without any representation or warranty of any such Agent or Lender.

Section 9.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Article IX, Section 2.14(d) and Sections 10.03(c), 10.09, 10.10 and 10.12 and the decisions and actions of the Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; *provided*, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 9.08 only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (b) except as set forth specifically herein, each of the Administrative Agent and the Lenders shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as set forth specifically herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

Section 9.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

Section 9.13 Erroneous Payments.

(a) If the Administrative Agent notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient, a "***Payment Recipient***") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "***Erroneous Payment***") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Payment Recipient hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment (a "***Payment Notice***"), (y) that was not preceded or accompanied by a Payment Notice, or (z) that such Payment Recipient otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(i) an error may have been made (in the case of immediately preceding clauses (x) or (y)) or an error has been made (in the case of immediately preceding clause (z)) with respect to such payment, prepayment or repayment; and

(ii) such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof and that it is so notifying the Administrative pursuant to this Section 9.13(b).

(c) Each Lender or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Secured Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) In the event an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "***Erroneous Payment Return Deficiency***"), upon the Administrative Agent's request to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant class with respect to which such Erroneous Payment was made (the "***Erroneous Payment Impacted Class***") in an amount equal to the Erroneous Payment Return Deficiency (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "***Erroneous Payment Deficiency Assignment***") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment and (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Credit Party for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine

(g) Each party's obligations, agreements and waivers under this Section 9.13 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

ARTICLE X
MISCELLANEOUS

Section 10.01 Notices.

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows:

if to any Credit Party, to the Borrower at:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, NY 13413
Attention: Bryan Menar, Chief Financial Officer
Cathy A. King, Vice President & General Counsel
E-mail: bryan_menar@partech.com
cathy_king@partech.com

and (which shall not constitute notice):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Aaron F. Adams
Tel: (212) 351-2494
Email: AFAdams@gibsondunn.com

if to the Administrative Agent or the Collateral Agent at:

Owl Rock First Lien Master Fund, L.P.
399 Park Avenue, 38th Floor
New York, NY 10022
Attention: Bryan Cole
Phone: 212-419-3035
Email: adminagent@owlrock.com

with a copy to (which shall not constitute notice):

Proskauer Rose LLP
One International Place
Boston, MA 02110-2600
Attention: Gary J. Creem
Phone: (617) 526-9637
Email: gcreem@proskauer.com

if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, they shall be deemed to have been given at the opening of business on the next Business Day for the recipient); notices sent by electronic mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent by 6:00 p.m. New York City time on a Business Day for the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient. Notices delivered through electronic communications (other than electronic mail) to the extent provided in clause (b) below, shall be effective as provided in said clause (b). Any party hereto may change its address or telecopier number or electronic mail address for notices and other communications hereunder by written notice to the Borrower, the Agents and the Lenders.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may (subject to Section 10.01(d)) be delivered or furnished by electronic communication (excluding electronic mail (which is covered above in clause (a)) but including Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. Each of the Administrative Agent, the Collateral Agent and the Borrower may agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including as set forth in Section 10.01(d)); *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its electronic mail address as described in the foregoing clause (a) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, etc. Any party hereto may change its address or telecopier number or electronic mail address for notices and other communications hereunder by written notice to the other parties hereto.

(d) Posting. Each Credit Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication (unless otherwise approved in writing by the Administrative Agent) that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides a Notice of Intent to Cure, (iv) provides notice of any Default under this Agreement or (v) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/ soft medium in a format reasonably acceptable to the Administrative Agent at such e-mail address(es) provided to the Borrower from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Credit Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall reasonably request. Nothing in this Section 10.01 shall prejudice the right of the Agents, any Lender or any Credit Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

(e) Platform. Each Credit Party further agrees that any Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks or SyndTrak or a substantially similar secure electronic transmission system (the "**Platform**"). The Platform is provided "as is" and "as available." The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform. In no event shall any Agent or any of its Related Parties have any liability to the Credit Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Credit Party's or such Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's bad faith, gross negligence or willful misconduct.

(f) Public/Private. (i) Each Credit Party hereby authorizes the Administrative Agent to distribute (A) to Public Siders all Communications that the Borrower identifies in writing as containing no MNPI ("**Public Side Communications**"), and the Borrower represents and warrants that no such Public Side Communications contain any MNPI, and, at the reasonable written request of the Administrative Agent, the Borrower shall use commercially reasonable efforts to identify Public Side Communications by clearly and conspicuously marking the same as "PUBLIC"; and (B) to Private Siders all Communications other than Public Side Communications (such Communications, "**Private Side Communications**"). The Borrower agrees to designate as Private Side Communications only those Communications or portions thereof that it reasonably believes in good faith constitute MNPI, and agrees to use all commercially reasonable efforts not to designate any Communications provided under Section 5.01(a) and (b) as Private Side Communications. "**Private Siders**" shall mean Lenders' employees and representatives who have declared that they are authorized to receive MNPI. "**Public Siders**" shall mean Lenders' employees and representatives who have not declared that they are authorized to receive MNPI; it being understood that Public Siders may be engaged in investment and other market-related activities with respect to the Borrower's or its Affiliates' securities or loans. "**MNPI**" shall mean material non-public information (within the meaning of United States federal securities laws assuming that the Borrower is a public reporting company under federal securities laws (regardless of whether the Borrower is actually a public reporting company under federal securities laws)) with respect to the Borrower, its Subsidiaries and any of their respective securities.

(ii) Each Lender acknowledges that United States federal and state securities laws prohibit any person from purchasing or selling securities on the basis of material, non-public information concerning the issuer of such securities or, subject to certain limited exceptions, from communicating such information to any other person. Each Lender confirms that it has developed procedures designed to ensure compliance with these securities laws.

(iii) Each Lender acknowledges that circumstances may arise that require it to refer to Communications that may contain MNPI. Accordingly, each Lender agrees that it will use commercially reasonable efforts to designate at least one individual to receive Private Side Communications on its behalf in compliance with its procedures and applicable Requirements of Law and identify such designee (including such designee's contact information) on such Lender's Administrative Questionnaire. Each Lender agrees to notify the Administrative Agent in writing from time to time of such Lender's designee's e-mail address to which notice of the availability of Private Side Communications may be sent by electronic transmission.

Section 10.02 Waivers; Amendment.

(a) Generally. No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Credit Party therefrom shall in any event be effective unless the same shall be permitted by this Section 10.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Required Consents. Subject to Section 10.02(c), (d) and (e), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Administrative Agent or, in the case of any other Loan Document (other than the Fee Letter, which may be amended in accordance with their terms), pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Credit Party or Credit Parties that are party thereto, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall be effective if the effect thereof would be to:

(i) increase the Commitment of any Lender without the written consent of such Lender (other than with respect to any Incremental Facilities to which such Lender has agreed) (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant, mandatory prepayment or Default or Event of Default shall constitute an increase in the Commitment of any Lender);

(ii) reduce the principal amount of or premium, if any, on any Loan or reduce the rate of interest thereon or fees thereon (but excluding any waiver of the imposition of the Default Rate or amendment of the definition of "Default Rate"), including any provision establishing a minimum rate (other than any waiver, extension or reduction of interest pursuant to Section 2.06(c) or any waivers of conditions precedent, waivers or extensions of mandatory prepayments or commitment reduction or, for the avoidance of doubt, waivers of the provisions of Section 2.20(d) (*provided* that any change in the definition of any ratios used in calculating any interest rate or fee (or any component definition thereof) shall not constitute a reduction in any rate of interest) for purposes of this clause (ii)), or reduce or waive any fees (including any fees or any prepayment fee or premium) payable hereunder, without the written consent of each Lender directly and adversely affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in any fee for purposes of this clause (ii));

(iii) (A) extend the scheduled final maturity of any Loan or extend any scheduled date of payment of principal amount of any Loan under Section 2.09 (other than, for the avoidance of doubt, any mandatory prepayment) except in accordance with Section 2.20, Section 2.21 and Section 2.22, or (B) postpone the date for payment of any interest, premium or fees payable hereunder (other than waivers of default interest, Defaults or Events of Default, waivers or extension of any mandatory prepayments or default interest or, for the avoidance of doubt, waivers of the provisions of Section 2.20(d)), in any case, without the written consent of each Lender directly and adversely affected thereby; provided, that waivers of any condition precedent shall not constitute an extension of maturity date;

(iv) release the Borrower or release all or substantially all of the value of the Subsidiary Guarantors from their Guarantee (except as expressly provided in Article IX), without the written consent of each Lender;

(v) release all or substantially all of the Collateral from the Liens created by the Security Documents without the written consent of each Lender (except as otherwise expressly permitted hereby or by the Security Documents); *provided* that, for the avoidance of doubt, any transaction permitted under Section 6.04 or Section 6.05 shall not be subject to this clause (iii) to the extent such transaction does not result in the release of all or substantially all of the Collateral;

(vi) change any provision of this Section 10.02(b) that has the effect of decreasing the number of Lenders that must approve any amendment, modification or waiver, without the written consent of each Lender (other than modifications in connection with repurchases of Loans, amendments with respect to any Incremental Facilities and amendments with respect to extensions of maturity, which shall only require the written consent of each Lender directly and adversely affected thereby);

(vii) change the percentage set forth in the definition of "Required Lenders," or any other provision of any Loan Document (including this Section) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the written consent of each Lender, other than (i) to increase such percentage or number or to give any Additional Lender or group of Lenders such right to waive, amend or modify or make any such determination or grant any such consent or (ii) modifications in connection with repurchases of Loans, amendments with respect to any Incremental Facilities and amendments with respect to extensions of maturity, which shall only require the written consent of each Lender directly and adversely affected thereby; or

(viii) change or waive any provision of Article IX as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the written consent of such Agent.

Notwithstanding anything herein to the contrary, this Agreement and any other Loan Document may be amended, modified or supplemented solely with the consent of the Administrative Agent (or the Collateral Agent, as applicable) and the Borrower, each in their sole discretion, without the need to obtain the consent of any other Lender if such amendment, modification or supplement is delivered in order to (v) amend any provision of any Security Document, the Guarantee, or enter into any new agreement or instrument, to be consistent with this Agreement and the other Loan Documents or as required by local law to give effect to any guaranty, or to give effect to or to protect any security interest for the benefit of the Secured Parties, in any property so that the security interests comply with applicable law, (w) unless the same is objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof by the Borrower or the Administrative Agent, cure ambiguities, defects, errors, inconsistencies, mistakes, or omissions of a technical nature in this Agreement or the applicable Loan Document, (x) add terms that are favorable to the Lenders (as reasonably determined by the Administrative Agent) in connection with an Incremental Facility or Credit Agreement Refinancing Indebtedness, (y) create a fungible class of Loans (including by increasing (but, for the avoidance of doubt, not by decreasing) the amount of amortization due and payable with respect to any class of Loan) or (z) in the case of any applicable Intercreditor Agreement (or any other intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01 and defined terms referenced therein)), if such amendment relates to Obligations other than the Obligations hereunder, or to grant a new Lien for the benefit of the Secured Parties or extend an Existing Lien over additional property.

Any waiver, amendment, supplement or modification in accordance with this Section 10.02 shall apply equally to each of the affected Lenders and shall be binding upon the Borrower, the Subsidiary Guarantors, all Lenders, the Administrative Agent, the Collateral Agent and all future holders of the affected Loans. In the case of any waiver in accordance with this Section 10.02, the Borrower, the Subsidiary Guarantors, the Lenders, the Administrative Agent and the Collateral Agent shall be restored to their former positions and rights hereunder and under the other Loan Documents, and any Default or Event of Default so waived shall be deemed to be cured and not continuing, it being understood that no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. In connection with the foregoing provisions, the Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender.

(c) Collateral.

(i) Without the consent of any other person, but subject to the terms of any applicable Intercreditor Agreement, the applicable Credit Party or Credit Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument), to effect the granting, perfection, protection, expansion (including to cover additional amounts as secured obligations thereunder) or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law (including local law).

(ii) Notwithstanding anything in this Agreement or any Security Document to the contrary, the Administrative Agent and/or, as applicable, the Collateral Agent may, in its sole discretion, grant extensions of time for the satisfaction of any of the requirements under Sections 5.10 and 5.11 or of any Security Document in respect of any particular Collateral or any particular Subsidiary if it determines that the satisfaction thereof with respect to such Collateral or such Subsidiary cannot be accomplished without undue expense or unreasonable effort or due to factors beyond the control of the Borrower and the Restricted Subsidiaries by the time or times at which any such requirement would otherwise be required to be satisfied under this Agreement or any Security Document.

(iii) The Lenders hereby irrevocably agree that the Liens granted to the Collateral Agent by the Credit Parties on any Collateral shall be automatically released (i) in full, upon the Payment in Full of the Obligations, (ii) upon the sale or other disposition of such Collateral to any Person other than another Credit Party, to the extent such sale or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided by any Credit Party upon its reasonable request without further inquiry), (iii) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with this Section 10.02), (iv) to the extent the property constituting such Collateral is owned by any Guarantor, upon the release of such Guarantor from its obligations under the applicable Guarantee (in accordance with the final paragraph of Section 9.10), (v) as required to effect any sale or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Security Documents, or (vi) if such assets constitute Excluded Property.

(d) Certain Other Amendments. Notwithstanding anything in this Agreement (including, without limitation, this Section 10.02) or any other Loan Document to the contrary, (i) this Agreement and the other Loan Documents may be amended to effect an Incremental Amendment, Refinancing Amendment or Extension Amendment pursuant to Sections 2.20, 2.21 or 2.22 (and the Administrative Agent and the Borrower may effect such amendments to this Agreement and the other Loan Documents without the consent of any other party as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the terms of any such Incremental Amendment, Refinancing Amendment or Extension Amendment) and (ii) the Loan Documents may be amended to add documentation agents and make customary changes and references related thereto with the consent of only the Borrower and the Administrative Agent, and, for the avoidance of doubt, waivers by no other Lender (or the Required Lenders) shall be required.

(e) Non-Consenting Lenders. The Borrower may, at its sole expense and effort, upon notice to a Non-Consenting Lender and the Administrative Agent, require such Lender to (i) be paid off in full for all of its Loans, premiums, fees, interest due and all other amounts payable to it (or to become payable to it upon such payoff in full) related thereto and relinquish all rights it has under the Loan Documents, or (ii) assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.04), all of its interests, rights (other than its existing rights to payments pursuant to Sections 2.15 and 2.16) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment or the Borrower (in which case such Loans shall, after such assignment, be immediately deemed cancelled for all purposes and no longer outstanding (and may not be resold) for all purposes of this Agreement and the other Loan Documents)); *provided* that, in the case of this clause (ii), (1) the Borrower or other assignee shall have paid to the Administrative Agent (unless waived by the Administrative Agent) the assignment fee (if any) specified in Section 10.04(b); (2) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable (including any amount pursuant to Section 2.10(k)) to it hereunder in connection with any prepayment of its Loans and under the other Loan Documents from the assignee or the Borrower; (3) such assignment does not conflict with applicable Law; and (4) the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, other than as a result of a waiver by such Lender, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(f) Additional Credit Facilities. Subject to Sections 2.21 and 2.22 hereof, this Agreement may be amended (or amended and restated) (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders on substantially the same basis as the Lenders prior to such inclusion.

Section 10.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay, promptly following written demand therefor (including documentation to reasonably support such request): (i) all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent and their respective Affiliates (including the reasonable, documented and invoiced out-of-pocket fees, charges and disbursements of one primary counsel to the Agents and their respective Affiliates, taken as a whole, selected by the Administrative Agent (plus one additional primary counsel reasonably necessary due to actual or reasonably perceived potential conflicts of interest among such parties, where the parties affected by such conflict informs the Borrower of such conflict) plus, if reasonably necessary, the reasonable, documented and invoiced out-of-pocket fees and expenses of one local counsel per relevant jurisdiction that is material to the interests of the Lender (plus one additional local counsel in each such relevant jurisdiction reasonably necessary due to actual or reasonably perceived potential conflicts of interest among such parties in each relevant jurisdiction to each group of similarly affected indemnified persons, in each case, with the consent of the Borrower, not to be unreasonably withheld, conditioned or delayed) (which may include a single special counsel acting in multiple jurisdictions, in each case, in jurisdictions material to the interests of the Lenders) and consultants for the Administrative Agent, the Collateral Agent and the Lenders, in connection with the preparation, negotiation, execution, delivery, filing and administration of this Agreement and the other Loan Documents and any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, including in connection with post-closing searches to confirm that security filings and recordations have been properly made, (ii) all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent, the Collateral Agent or any Lender (including the reasonable, documented and invoiced out-of-pocket fees, charges and disbursements of one primary counsel to the Agents and their respective Affiliates, taken as a whole, selected by the Administrative Agent (plus one additional counsel reasonably necessary due to actual or reasonably perceived potential conflicts of interest among such parties, where the parties affected by such conflict informs the Borrower of such conflict) plus, if reasonably necessary, the reasonable, documented and invoiced out-of-pocket fees and expenses of one local counsel per relevant jurisdiction that is material to the interests of the Lender (plus one additional local counsel reasonably necessary due to actual or reasonably perceived potential conflicts of interest among such parties in each relevant jurisdiction to each group of similarly affected indemnified persons, in each case, with the consent of the Borrower, not to be unreasonably withheld, conditioned or delayed) (which may include a single special counsel acting in multiple jurisdictions, in each case, in jurisdictions material to the interests of the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.03, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans and (iii) all Other Taxes, as provided in Section 2.15.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, the Collateral Agent, each Lender, each Commitment Party, the Lead Arranger and Bookrunner and each Related Party of any of the foregoing persons (but excluding in any case any Excluded Affiliate) (each such person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all actual and direct losses (other than lost profits), claims, damages, liabilities and related reasonable, documented and invoiced out-of-pocket expenses (including the reasonable, documented and invoiced out-of-pocket fees, expenses, charges and disbursements of one counsel for all Indemnitees, taken as a whole, selected by the Administrative Agent (plus one additional counsel reasonably necessary due to actual or reasonably perceived potential conflicts of interest among the Indemnitees, where the Indemnitee affected by such conflict informs the Borrower of such conflict) plus, if reasonably necessary, the reasonable and documented out-of-pocket fees and expenses of one local counsel per relevant jurisdiction that is material to the interests of the Lender (plus one additional local counsel reasonably necessary due to actual or reasonably perceived potential conflicts of interest among such parties in each relevant jurisdiction to each group of similarly affected indemnified persons, in each case, with the consent of the Borrower, not to be unreasonably withheld, conditioned or delayed) (which may include a single special counsel acting in multiple jurisdictions, in each case, in jurisdictions material to the interests of the Lenders) and consultants or third party advisors (but excluding allocated costs of in-house counsel) incurred by any Indemnitee or asserted against any Indemnitee by any party hereto or any third party arising out of, in connection with, or as a result of (i) the Transactions (or any of them), the execution or delivery of this Agreement, any other Loan Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release or threatened Release of Hazardous Materials on, at, under or from any Real Property or facility now or hereafter owned, leased or operated by any Group Member at any time, or any Environmental Claim related in any way to any Group Member, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Credit Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (w) the fraud, bad faith, gross negligence or willful misconduct of any Indemnitee or any of its Related Parties, (x) result from a claim brought by the Borrower or any other Credit Party against an Indemnitee for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, (y) arises from disputes arising solely among indemnified persons that do not involve any act or omission by any Group Member or its Affiliates (other than disputes involving claims against the Agents or any other agent or arranger in their respective capacities as such), or (z) are payable as a result of a settlement agreement related to the foregoing effected without the written consent of the Borrower (which consent shall not to be unreasonably withheld, conditioned or delayed) (in the case of this clause (z)); *provided*, *however*, that such Indemnitee shall promptly refund any amount paid to such Indemnitee for fees, expenses, damages, indemnification or contribution, in each case, pursuant to this Section 10.03(b) to the extent that there is a final, non-appealable judicial determination that such Indemnitee was not entitled to indemnification pursuant to the express terms of this Section 10.03. For the avoidance of doubt, this Section 10.03(b) shall not apply to Taxes other than Taxes that represent losses, claims, damages, liabilities, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to pay any amount required under clause (a) or (b) of this Section 10.03 to be paid by it to the Administrative Agent (or any sub-agent thereof), the Collateral Agent or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof) or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof), or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.14. For purposes hereof, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the outstanding Loans.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Requirements of Law, no party hereto shall assert, and each party hereby waives, any claim against any other party hereto on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No party hereto shall be liable for any damages (other than those damages resulting from bad faith, fraud, gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction by final and non-appealable judgment) arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than thirty (30) Business Days after written demand (including detailed invoices) therefor.

Section 10.04 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Credit Party may assign or otherwise transfer any of its rights or obligations hereunder (other than in connection with a transaction permitted by Section 6.04) without the prior written consent of the Administrative Agent, the Collateral Agent and each Lender (and any other attempted assignment or transfer by a Credit Party shall be null and void), and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of clause (b) of this Section 10.04, Section 2.16(b) or Section 10.02(e), (ii) by way of participation in accordance with the provisions of clause (d) of this Section 10.04 or (iii) by way of pledge or assignment of a security interest in accordance with clause (f) of this Section 10.04. Nothing in this Agreement or any other Loan Document, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section 10.04 and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) subject to, except (1) in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender (in each case other than a Disqualified Institution) or (2) with respect to the elevation of any participation to an assignment, if Owl Rock, in its sole discretion, determines the assignment is necessary to comply with or avoid the consequences of a determination by any regulatory authority, including the Securities and Exchange Commission or court of law, the prior written consent of (A) the Administrative Agent and (B) so long as (other than in the case of a proposed assignment to a Disqualified Institution) (1) no Event of Default under Section 8.01(a), (b), (d) (solely as a result of a breach of Section 6.08), (g), (h) or (m) (solely with respect to the failure to comply with the financial reporting requirements set forth in Section 5.01(a), (b) or (c)) shall have occurred and be continuing, the Borrower (the Borrower's consent to be deemed to have been given if (except in the case of a proposed assignment to a Disqualified Institution) the Borrower shall not have responded within ten (10) Business Days of a written request for such consent) (in the case of clauses (A) and (B), such consent not to be unreasonably withheld, conditioned or delayed); *provided* that:

(i) except in the case of any assignment (a) of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it, (b) to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender or (c) as agreed by the Borrower and the Administrative Agent, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $1,000,000, and $1,000,000 increments, or if less, all of such Lender's remaining Loans (*provided*, that contemporaneous assignments to or by two or more affiliated Approved Funds shall be aggregated for purposes of meeting such minimum transfer amount), unless each of the Administrative Agent, and so long as no Event of Default under Section 8.01(a),(b), (g) or (h) has occurred and is continuing, the Borrower otherwise consents (such consent not to be unreasonably withheld, conditioned or delayed, and which consent shall be deemed to have been given by the Borrower if the Borrower has not responded within ten (10) Business Days of a written request for such consent);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate tranches on a non-*pro rata* basis;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with (other than in the case of an assignment to an Affiliate of the assigning Lender) a processing and recordation fee of $3,500 (which fee may be waived or reduced by the Administrative Agent in its discretion), and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all requested know-your-customer documentation;

(iv) no assignment shall be made to a Disqualified Institution without the Borrower's prior consent in writing (which consent may be withheld in its absolute discretion); *provided* that the Administrative Agent shall have no responsibility (in its capacity as Administrative Agent) for monitoring, ascertaining, inquiring into or enforcing any Lender's compliance with the provisions related to Disqualified Institutions, and without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to, or the restrictions on any exercise of rights or remedies of, any Disqualified Institution; and

(v) notwithstanding anything to the contrary contained in this Section 10.04(b) or any other provision of this Agreement, the Lenders shall have no right at any time to sell, assign or transfer any Loans owing to it to the Borrower or any of its Subsidiaries;

Subject to the recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.04, from and after the date such recordation in the Register is made, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement (including, for the avoidance of doubt, any rights and obligations pursuant to Section 2.15), and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15, and 10.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section 10.04.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its U.S. offices a copy of each Assignment and Assumption delivered to it (or equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and stated interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. No assignment shall be effective unless recorded in the Register. The Register is intended to cause each Loan and other obligation hereunder to be in registered form within the meaning of Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. The Register shall be available for inspection by the Borrower, the Collateral Agent and any Lender (with respect to its own interests), at any reasonable time and from time to time upon reasonable prior written notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent sell participations to any person (other than a natural person or the Borrower or any of its Affiliates or any Disqualified Institutions) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with regard to (a) reductions of principal, interest or fees owing to such Participant to the extent that Lenders have a consent right with respect thereto pursuant to clause (ii) of the first proviso in Section 10.02(b), (b) extensions of final scheduled maturity or times for payment of interest or fees owing to such participant to the extent that Lenders have a consent right with respect thereto pursuant to clauses (iii)(A), (B) and (C) of Section 10.02(b) and (c) releases of Collateral or guarantees requiring the approval of all Lenders with respect to clauses (iv) and (v) of Section 10.02(b), in each case, that directly affects such Participant. Subject to clause (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 (provided that each Participant shall be subject to the requirements of those Sections and the definition of Excluded Taxes as if it were a Lender) (provided that any documentation required to be provided by a Participant pursuant to Section 2.15(e) shall be provided to the participating Lender and, if Additional Amounts are required to be paid pursuant to Section 2.15, to the Borrower and the Administrative Agent, and the definition of Excluded Taxes shall apply) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.14 as though it were a Lender. Notwithstanding anything to the contrary, no Lender shall enter into any agreement with any Participant that will permit such Participant to influence or control the voting rights of such Lender except with regard to (a) reductions of principal, interest or fees owing to such Participant to the extent that such Participant has a consent right with respect thereto pursuant to this Section 10.02(d)(ii) in clause (ii) of the first proviso in Section 10.02(b), (b) extensions of final scheduled maturity or times for payment of interest or fees owing to such participant to the extent that such Participant has a consent right with respect thereto pursuant to this Section 10.02(d)(ii) with respect to clauses (iii)(A), (B) and (C) of Section 10.02(b) and (c) releases of Collateral or guarantees requiring the approval of all Lenders with respect to clauses (iv) and (v) of Section 10.02(b), in each case, that directly affects such Participant.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal and stated interest amounts of each participant's interest in the Loans or other obligations under this Agreement (a "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of a Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (or any amended or successor version) and within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. Upon request by the Borrower, any Lender that sells a participation shall confirm that any such Participant is not a Disqualified Institution. The entries in a Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in a Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(iv) Any such participation that does not comply with this Section shall be void *ab initio* and, promptly following such Lender becoming aware that any such participation has been made in breach of this Section, the Participant Register shall be modified by it to reverse such participation and shall be disclosed to the Borrower and the Administrative Agent.

(v) The Administrative Agent shall have no responsibility (in its capacity as Administrative Agent) for (i) maintaining a Participant Register and (ii) any Lender's compliance with this Section, including any sale of participations to a Disqualified Institution in violation hereof by any Lender.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent or except to the extent the right to greater payment results from a Change in Law after the Participant becomes a Participant.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender without restriction, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of the Borrower or the Administrative Agent or any other Person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(g) Disqualified Institutions. Notwithstanding anything to the contrary herein, if any Loans are assigned to or any participations are purchased or otherwise acquired, without the Borrower's consent (in violation of Section 10.04(b) or (d)), by a Disqualified Institution, in each case, then: (i) the Borrower may (x) terminate any commitment of such Disqualified Institution and repay any applicable outstanding Loans (in the case of Loans, at a price equal to the lesser of par and the amount the applicable Disqualified Institution paid to acquire such Loans) without premium, penalty, prepayment fee or breakage, and/or (y) require such Disqualified Institution to assign its rights and obligations to one or more Eligible Assignees at the price indicated in the immediately preceding clause (x) (which assignment shall not be subject to the processing and recordation fee described in Section 10.04(b)(iii)), (ii) no such Disqualified Institution shall receive any information or reporting provided by the Borrower, the Administrative Agent or any other Lender, (iii) for purposes of voting, any Loans, Commitments or participations held by such Disqualified Institution shall be deemed not to be outstanding and such Disqualified Institution shall have no voting or consent rights with respect to "required Lender" votes or consents, in each case notwithstanding Section 10.02(b), (iv) for purposes of any matter requiring the vote or consent of each Lender affected by any amendment or waiver, such Disqualified Institution shall be deemed to have voted or consented to approve such amendment or waiver if a majority of the affected Lenders so approve, and (v) such Disqualified Institution shall not be entitled to any expense reimbursement or indemnification rights ordinarily afforded to Lenders or Participants hereunder or in any Loan Document. Notwithstanding anything to the contrary contained in this Agreement, (a) the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions and (b) the Borrowers (on behalf of themselves and the other Credit Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Institution.

Section 10.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Credit Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until the Payment in Full of the Obligations and the termination or expiration of the Commitments. The provisions of Sections 2.12, 2.14, 2.15 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the Payment in Full of the Obligations or the termination of this Agreement or any provision hereof.

Section 10.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or other electronic transmission (PDF or TIFF format) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time due and owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party (but excluding amounts held in payroll, employee benefits, tax and other fiduciary or trust accounts) against any and all of the obligations of such Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction; provided, that, notwithstanding the foregoing, (i) the interpretation of the definition of Company Material Adverse Effect (as defined in the Closing Date Acquisition Agreement) and whether or not a Company Material Adverse Effect (as defined in the Closing Date Acquisition Agreement) has occurred, (ii) the determination of the accuracy of any Specified Acquisition Agreement Representation and whether as a result of any inaccuracy thereof the Borrower or its Affiliates party to the Closing Date Acquisition Agreement has the right to terminate their obligations under the Closing Date Acquisition Agreement or decline to consummate the Closing Date Acquisition pursuant to the terms thereof, and (c) the determination of whether the Closing Date Acquisition has been consummated in accordance with the terms of the Closing Date Acquisition Agreement and, in any case, claims or disputes arising out of any such interpretation or determination of any aspect thereof shall, in each case, be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts law thereof.

(b) Submission to Jurisdiction. Except as provided in the last sentence of this Section 10.09(b), each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Requirements of Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Requirements of Law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in Section 10.01. Nothing in this Agreement or any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law.

Section 10.10 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 10.12 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (in each case, other than to a Disqualified Institution) (a) to its Affiliates and to its and its Affiliates' respective partners, directors, investors, lenders, officers, employees, agents, advisors, attorneys, numbering, administration and settlement services provider and other representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential or, with respect to disclosure to investors or prospective investors, such disclosure is in connection with customary portfolio reviews), (b) to the extent requested by any Governmental Authority or regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Requirements of Law or by any subpoena or similar legal process (including, without limitation, in connection with filings, submissions and any other similar documentation required or customary to comply with Securities and Exchange Commission filing requirements), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of, or preparing to enforce, rights hereunder or thereunder, but only to the extent required in connection with such exercise or enforcement, (f) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 10.12, to (i) any financing sources and Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement and in connection with any pledge or assignment made pursuant to Section 10.04(f); provided that no such disclosure shall be made by such Lender or such Agent or any of their respective Affiliates to any such Person that is a Disqualified Institution, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations or (iii) any rating agency for the purpose of obtaining a credit rating applicable to any Credit Party or to the credit facilities hereunder, (g) with the prior consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower, (i) to the extent necessary or customary for inclusion in league table measurements, (j) to the National Association of Insurance Commissioners or any similar organization or any examiner or (k) to a Person that is an investor or prospective investor in a Securitization or other financing, separate account or commingled fund so long as such investor or prospective investor is informed that its access to information regarding the Credit Parties and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization or other financing, separate account or commingled fund and who agrees to treat such information as confidential, (l) to a Person that is a trustee, collateral agent, collateral manager, servicer, investor or secured party in a Securitization in connection with the administration, servicing and evaluation of, and reporting on, the assets serving as collateral for such Securitization, or (l) otherwise to the extent consisting of general portfolio information that does not identify the Borrower; *provided*, that with respect to clauses (b) and (c) above, if the Administrative Agent or any Lender receives a subpoena, interrogatory or other request (verbal or otherwise) for any Information, or believes that it is legally required to disclose any of the Information to a third party, it shall, in advance of such disclosure, to the extent practicable and legally permissible and unless such disclosure is made to regulatory or self-regulatory authorities in the course of routine audits and reviews, promptly provide to the Borrower written notice of any such request or requirement so that the Borrower or the applicable Credit Party (or Subsidiary thereof) may seek a protective order or other remedy; *provided, further*, that it shall (1) exercise reasonable efforts to preserve the confidentiality of such Information, (2) to the extent legally permissible, use commercially reasonable efforts to provide the Borrower, in advance of such disclosure, with copies of any Information it intends to disclose (and, if applicable, the text of the disclosure language itself), and (3) to the extent legally permissible, reasonably cooperate with the Borrower or applicable Credit Party (or Subsidiary thereof) to the extent the Borrower or such Credit Party (or Subsidiary thereof) seeks to limit such disclosures; *provided further* that no such disclosure shall be made to any members of any deal team of any Agent, any Lender or any Affiliate of any Agent or any Lender that are engaged (x) primarily as principals in private equity or venture capital or (y) in the sale of the Borrower or its Affiliates, including through the provision of advisory services (in each case, other than any "above the wall" individuals) (as described in the immediately preceding clauses (x) and (y), "**Excluded Affiliates**"). For purposes of this Section, "**Information**" shall mean all information received from or on behalf of the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries. For purposes of this Section, "**Securitization**" means a public or private offering by a Lender or any of its Affiliates or their respective successors and permitted assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. Except with respect to disclosing any Information to any Disqualified Institution, any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. The Administrative Agent or any Lender may, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), publish press releases, tombstones, advertising or other promotional materials (whether by means of electronic transmission, posting to a website or other internet application, print media or otherwise) relating to the financing transactions contemplated by this Agreement, which may include a Credit Party's or its Subsidiary's name, product photographs, logo, trademark or related information.

Section 10.13 USA PATRIOT Act Notice. Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests that is required in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 10.14 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively, the "**Rate Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Rate Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Rate Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Rate Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

Section 10.15 Obligations Absolute. To the fullest extent permitted by applicable Requirements of Law, all obligations of the Credit Parties hereunder shall be absolute and unconditional irrespective of:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Credit Party;

(b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Credit Party;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;

(e) any exercise or non-exercise, or any waiver, of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense (other than the Payment in Full of the Obligations) available to, or a discharge of, the Credit Parties.

Section 10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower, each other Credit Party and their respective Affiliates, on the one hand, and the Administrative Agent, and the Lenders, on the other hand, (B) each of the Borrower and the other Credit Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Credit Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Credit Party or any of their respective Affiliates, or any other Person, and (B) neither the Administrative Agent, nor any Lender has any obligation to the Borrower, any other Credit Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Credit Parties and their respective Affiliates, and neither the Administrative Agent, nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Credit Party or any of their respective Affiliates. To the fullest extent permitted by law, the Borrower and each other Credit Party hereby waives and releases any claims that it may have against the Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.17 Intercreditor Agreement.

(a) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to the Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of any other applicable Intercreditor Agreement, (b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of any other applicable Intercreditor Agreement, on the other hand, the terms and provisions of such Intercreditor Agreement shall control, and (c) each Lender and, by its acceptance of the benefit of the Security Documents, each other Secured Party, authorizes the Administrative Agent and/or the Collateral Agent to execute any such Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

(b) Each Lender and, by its acceptance of the benefit of the Security Documents, each other Secured Party, hereby agrees that the Administrative Agent and/or Collateral Agent may enter into any intercreditor agreement and/or subordination agreement pursuant to, or contemplated by, the terms of this Agreement (including with respect to Indebtedness permitted pursuant to Section 6.01 and defined terms referenced therein) on its behalf and agrees to be bound by the terms thereof and, in each case, consents and agrees to the appointment of Owl Rock (or its affiliated designee, representative or agent) on its behalf as collateral agent, respectively, thereunder.

Section 10.18 Acknowledgement and Consent to Bail-In of Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 10.19 Electronic Execution of Assignments and Certain Other Documents. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including, without limitation, Assignment and Assumptions, Borrowing Requests, Interest Election Requests, Compliance Certificates, Joinder Agreements, amendments or other modifications, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.20 No Other Duties. Notwithstanding anything herein to the contrary, the Lead Arranger and Bookrunner listed on the cover page hereof shall not have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in their respective capacities, as applicable, as the Lead Arranger and Bookrunner hereunder.

ARTICLE XI
ACQUISITION MATTERS

Section 11.01 Consent to the Closing Date Acquisition. Notwithstanding anything to the contrary in the Loan Documents, the Secured Parties and all other parties hereto irrevocably and unconditionally consent to the consummation of the Closing Date Acquisition.

Section 11.02 Reference to Closing Date. Notwithstanding anything to the contrary in the Loan Documents, for purposes of the representations and warranties and the other provisions set forth in Article III of this Agreement, the conditions precedent set forth in Section 4.01 and any reference to "Closing Date" in Article V and Article VI, the making of the Loans on the Closing Date shall be assumed to occur concurrently with the consummation of the Closing Date Acquisition.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

PAR TECHNOLOGY CORPORATION

By: /s/Bryan A. Menar
Name: Bryan A. Menar
Title: Chief Financial Officer and Vice President

[Signature Page to Credit Agreement]

PARTECH, INC.

By: /s/Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

BRINK SOFTWARE INC.

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

ACCSYS, LLC

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

PAR PAYMENT SERVICES LLC

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Treasurer

PAR GOVERNMENT SYSTEMS CORPORATION

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President and Treasurer

[Signature Page to Credit Agreement]

ROME RESEARCH CORPORATION

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President Finance and Tresaurer

PUNCHH INC.

By: /s/ Bryan A. Menar
Name: Bryan A. Menar
Title: Vice President Finance and Tresaurer

[Signature Page to Credit Agreement]

ADMINISTRATIVE AGENT,
COLLATERAL AGENT AND LENDER:

OWL ROCK FIRST LIEN MASTER FUND, L.P.,

By: OWL ROCK FIRST LIEN GP, LLC
its general partner

By: Owl Rock Capital Advisors LLC
its Sole Member

By: /s/ Jeff Walwyn
Name: Jeff Walwyn
Title: Authorized Signatory

[Signature Page to Credit Agreement]

LENDERS:

OWL ROCK CAPITAL CORPORATION III

By: /s/ Jeff Walwyn

Name: Jeff Walwyn
Title: Authorized Signatory

OWL ROCK CORE INCOME CORP.

By: /s/ Jeff Walwyn

Name: Jeff Walwyn
Title: Authorized Signatory

OWL ROCK FIRST LIEN SUB-MASTER FUND 2, L.P.

By: **OWL ROCK FIRST LIEN GP, LLC**
its general partner
By: **Owl Rock Capital Advisors LLC**
its Sole Member

By: /s/ Jeff Walwyn

Name: Jeff Walwyn
Title: Authorized Signatory

PARLIAMENT FUNDING I LLC

By: /s/ Jeff Walwyn

Name: Jeff Walwyn
Title: Authorized Signatory

[Signature Page to Credit Agreement]

FLF FUNDING I LLC

By: /s/ Jeff Walwyn
Name: Jeff Walwyn
Title: Authorized Signatory

FLF FUNDING II LLC

By: /s/ Jeff Walwyn
Name: Jeff Walwyn
Title: Authorized Signatory

OWL ROCK DIVERSIFIED LENDING 2020 MASTER FUND, L.P.

By: **Owl Rock Diversified Lending 2020 GP, LLC**
its general partner
By: **Owl Rock Diversified Advisors LLC,**
its sole member

By: /s/ Jeff Walwyn
Name: Jeff Walwyn
Title: Authorized Signatory

OR OPPORTUNISTIC DL (C), L.P.

By: **OR Opportunistic DL (C) GP, LLC**
its general partner
By: **Owl Rock Capital Group LLC**
its Sole Member

By: /s/ Jeff Walwyn
Name: Jeff Walwyn
Title: Authorized Signatory

[Signature Page to Credit Agreement]

ANNEX A

Commitments

Lender	Commitment
OWL ROCK CAPITAL CORPORATION III	$ 11,600,000.00
OWL ROCK INCOME CORP.	$ 23,000,000.00
OWL ROCK FIRST LIEN SUB-MASTER FUND 2, L.P,	$ 17,063,397.44
PARLIAMENT FUNDING I LLC	$ 8,186,602.56
FLF FUNDING I LLC	$ 53,750,000.00
FLF FUNDING II LLC	$ 56,000,000.00
OWL ROCK DIVERSIFIED LENDING 2020 MASTER FUND, L.P.	$ 8,000,000.00
OR OPPORTUNISTIC DL (C), L.P.	$ 2,400,000.00
Total	**$ 180,000,000.00**

Exhibit 10.2

Execution Version

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (the "**Agreement**"), dated as of April 8, 2021, by and between PAR Technology Corporation, a Delaware corporation (the "**Company**"), and PAR Act III, LLC, a Delaware limited liability company (the "**Buyer**").

WHEREAS:

A. The Company and the Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the 1933 Act.

B. The Buyer wishes to purchase, and the Company wishes to sell at the Closing (as defined in Section 1(a)), upon the terms and conditions stated in this Agreement, 73,530 shares of common stock, par value $0.02 per share, of the Company (the "**Common Stock**" and such shares, the "**Common Shares**").

C. As a condition precedent to the Closing, the parties hereto will execute and deliver, among other things, (i) a Registration Rights Agreement, substantially in the form attached hereto as Exhibit A (the "**Registration Rights Agreement**"), (ii) an Investor Rights Agreement, substantially in the form attached hereto as Exhibit B (the "**Investor Rights Agreement**"), and (iii) a Common Stock Purchase Warrant, substantially in the form attached hereto as Exhibit C (the "**Warrant**").

D. The shares of Common Stock issuable pursuant to this Agreement are referred to herein as the "**Purchased Shares**".

E. The shares of Common Stock issuable pursuant to this Agreement, the Warrant and the Warrant Shares (as defined in the Warrant) are collectively referred to herein as the "**Securities**".

NOW, THEREFORE, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PURCHASED SHARES.

(a) Purchase of the Common Stock. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 5 and 6 below, the Company shall issue and sell to the Buyer free and clear of any liens, security interests, mortgages, pledges, charges, equities, claims or restrictions on transferability or encumbrances of any kind (collectively, "**Liens**") (other than Liens incurred by the Buyer, restrictions arising under applicable securities laws, or restrictions imposed by the Transaction Documents (as defined in Section 3(b)), and the Buyer agrees to purchase from the Company on the Closing Date (as defined in Section 1(b)), 73,530 Purchased Shares (the "**Closing**").

(b) Closing Date. The date, time and place of the Closing (the "**Closing Date**") shall be on the date hereof as promptly as practicable after notice of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 5 and 6, remotely by electronic exchange of Closing documentation (or such other date, time and place as is mutually agreed to by the Company and the Buyer).

(c) Purchase Price. The Buyer shall pay $68.00 for each Purchased Share to be purchased by the Buyer at the Closing (the "**Purchase Price**"). The aggregate Purchase Price paid by the Buyer shall be $5,000,040 (the "**Aggregate Purchase Price**").

(d) Form of Payment. On the Closing Date, (i) the Company shall issue to the Buyer in book-entry form the Purchased Shares and issue and deliver to the Buyer the Warrant, and (ii) subject to the receipt of evidence of issuance of the Purchased Shares referred to in Section 6(a)(ii)(B), the Buyer shall pay the Aggregate Purchase Price to the Company for the Purchased Shares at the Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions that have been confirmed telephonically by the parties prior to or on the Closing Date.

2. BUYER'S REPRESENTATIONS AND WARRANTIES. The Buyer represents and warrants that:

(a) Organization and Qualification. The Buyer is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed, and has the requisite power and authorization to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. The Buyer is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect. As used in this Agreement, "**Buyer Material Adverse Effect**" means any change, effect, event, occurrence or development that would prevent, materially delay, or materially impair the Buyer's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(b) Consents. The Buyer is not required to obtain any consent, authorization or order of, or make any filing or registration with any Governmental Authority (as defined in Section 3(d)) or any other Person (as defined in Section 2(d)), in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement, and the Buyer is unaware of any facts or circumstances that might prevent the Buyer from obtaining or effecting any of the consent, registration, application or filings pursuant to the preceding sentence.

(c) Sufficient Funds. At the Closing, the Buyer will have available funds necessary to consummate the purchase of the Purchased Shares and pay to the Company the Aggregate Purchase Price, as contemplated by Section 1(c).

(d) No Public Sale or Distribution. The Buyer is acquiring the applicable Purchased Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act. The Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(e) Accredited Investor Status. The Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D. The Buyer (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment with respect to the Securities and (ii) can bear the economic risk of (A) an investment in the Securities indefinitely and (B) a total loss in respect of such investment.

(f) Reliance on Exemptions. The Buyer understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Securities. Prior to the Closing, the Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and the Buyer is not a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")).

(g) Information. The Buyer and its advisors, if any, have been furnished with or have had full access to all materials relating to the business, finances and operations of the Company and of Punchh Inc. ("**Prism**") and materials relating to the offer and sale of the Securities that have been requested by the Buyer. The Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company or its representatives. The Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(h) No Governmental Review. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(i) Transfer or Resale. The Buyer acknowledges that: (i) the Securities have not been and are not being registered under the 1933 Act or any state securities laws, (ii) the Buyer cannot sell, transfer, or otherwise dispose of any of the Securities, except in compliance with the Transaction Documents and the registration requirements or exemption provisions of the 1933 Act and any other applicable securities laws; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (except pursuant to the Registration Rights Agreement).

(j) Brokers; Finders. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisors or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated by the Transaction Documents based upon arrangements made by or on behalf of the Buyer.

(k) Authorization; Validity; Enforcement. The Buyer has the requisite power and authority to enter into and perform its obligations under the Transaction Documents. The execution and delivery of this Agreement and the other Transaction Documents by the Buyer and the consummation by the Buyer of the transactions contemplated hereby and thereby have been, or when executed will be, duly authorized by the Buyer. This Agreement and the other Transaction Documents have been duly and validly authorized, executed and delivered on behalf of the Buyer and shall constitute the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms, except as such enforceability may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to applicable creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(l) No Conflicts. The execution, delivery and performance by the Buyer of this Agreement and the other Transaction Documents and the consummation by the Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and applicable laws of any foreign, federal, and other state laws) applicable to the Buyer or by which any property or asset of the Buyer is bound or affected, in each case other than as would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(m) No Other Company Representations or Warranties. The Buyer acknowledges and agrees that neither the Company nor any of its Subsidiaries (as defined in Section 3(a)) makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3 and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement. In connection with the due diligence investigation of the Company by the Buyer and its representatives, the Buyer and its representatives have received and may continue to receive from the Company and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information containing such information, regarding the Company and its Subsidiaries and their respective businesses and operations, including information regarding the Prism Acquisition Transaction (as defined in Section 3(a)), the Securities Purchase Agreement, dated as of the date hereof, between the Company and TRowe (as defined in the Registration Rights Agreement) and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (the "**TRowe Purchase Agreement**"), the Registration Rights Agreement, dated as of the date hereof, between the Company and TRowe and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (together with the TRowe Purchase Agreement, the "**TRowe Transaction Documents**"), and the Owl Rock Transaction. The Buyer hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which the Buyer is familiar, that the Buyer is making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans, so furnished to the Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information or business plans), and that except for the representations and warranties made by the Company in Section 3 and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement, the Buyer will have no claim against the Company or any of its Subsidiaries, or any of their respective representatives, with respect thereto. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Buyer or any of its Affiliates to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement, nor will anything in this Agreement operate to limit any claim by the Buyer or any of its Affiliates for actual and intentional fraud. As used in this Agreement, "**Affiliate**" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person as of the date which, or at any time during the period for which, the determination of affiliation is being made; provided that, with respect to Buyer, an Affiliate shall expressly include any Affiliate of Ronald M. Shaich, any Affiliate of Act III Equity Holdings, LLC and any custodian or trustee of any trust partnership or limited liability company exclusively for the benefit of, or the ownership interests of which are owned wholly by, Ronald M. Shaich, any of his spouse, children or other direct lineal descendants, or any one or more trusts exclusively for the benefit of any of them. For purposes of this definition, "control," when used with respect to any Person, has the meaning specified in Rule 12b-2 under the 1934 Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to the Buyer that except as (A) disclosed (to the extent that the relevance of any such disclosure with respect to any section of this Agreement is reasonably apparent on its face) in SEC Documents (as defined in Section 3(i)) filed or furnished after December 31, 2019 and prior to the date hereof (other than disclosure contained in the "Risk Factors" or "Forward Looking Statements" sections of such SEC Documents or any other sections to the extent such disclosures are similarly predictive or forward-looking in nature), or (B) set forth in the confidential disclosure letter delivered by the Company to the Buyer prior to the execution of this Agreement (the "**Company Disclosure Letter**") (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to, and shall be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement to the extent that it is reasonably apparent on its face that such information, item or matter is relevant to such other section or subsection):

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized or formed and validly existing and in good standing under the laws of the jurisdiction in which they are organized or formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted, except, solely with respect to the Company's Subsidiaries, to the extent that the failure to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below). Each of the Company and its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

As used in this Agreement, "**Subsidiary**" means any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity for which the Company directly or indirectly owns (a) at least 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (b) sufficient voting rights to elect at least a majority of the board of directors or other governing body. As used in this Agreement, "**Material Adverse Effect**" means any change, effect, event, occurrence or development that has a material adverse effect on the business, operations, results of operations, capital, properties, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, provided, that, none of the following shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (A) changes generally affecting the industry in which the Company or its Subsidiaries operate; (B) general changes in the economic or business conditions or securities, credit, financial or other capital markets of the U.S. or any other region outside of the U.S. (including changes generally in prevailing interest rates, currency exchange rates, credit markets and price levels or trading volumes) in which the Company or its Subsidiaries operate; (C) earthquakes, fires, floods, hurricanes, tornadoes, pandemics, or similar catastrophes or acts of god or weather conditions, and any state or federal government orders or other actions in response thereto, (D) political conditions, including acts of terrorism, war, sabotage, national or international calamity, military action or any other similar event or any change, escalation or worsening thereof after the date hereof (other than cyberattacks targeting the Company or its Subsidiaries); (E) any change in GAAP (as defined in Section 3(i)) or any change in laws of general applicability (or interpretation or enforcement thereof) after the date hereof; (F) the execution of this Agreement, the other Transaction Documents, the TRowe Transaction Documents, or the Agreement and Plan of Merger dated as of April 8, 2021, among the Company, ParTech Inc., Sliver Merger Sub, Inc., Prism and Fortis Advisors, LLC (the "**Prism Merger Agreement**"), the Escrow Agreement (as defined under the Prism Merger Agreement) and the Joinder Agreement (as defined under the Prism Merger Agreement) and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (collectively, the "**Prism Transaction Documents**") and all transactions contemplated thereby, including the Merger (as defined in the Prism Merger Agreement), the "**Prism Merger**" and collectively, the "**Prism Acquisition Transaction**"), or the public disclosure of such agreements or the transactions contemplated hereby and thereby (including the impact thereof on the relationships, contractual or otherwise, of the Company or any of its Subsidiaries with employees, labor unions (if any), financing sources, customers, suppliers, or partners that the Company can reasonably establish resulted from the execution or the public disclosure of this Agreement, the other Transaction Documents, the TRowe Transaction Documents or the Prism Transaction Documents, or the Prism Acquisition Transaction); (G) the execution of the Credit Agreement, dated as of April 8, 2021, among the Company, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Owl Rock First Lien Master Fund, L.P., and Owl Rock Capital Advisors LLC and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (the "**Owl Rock Transaction Documents**") and the transactions contemplated thereby (the "**Owl Rock Transaction**"), (H) any failure to meet internal or published projections, forecasts or revenue or earning predictions for any period; (I) a decline in the trading price or trading volume of the Company's Common Stock; provided that, with respect to clauses (H) and (I), the underlying causes of such failure, decline or change not otherwise excluded herein may be considered in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect; and (J) any actions taken, or failure to take any action, in each case, to which the Buyer has expressly given advance written approval or consent, that is affirmatively required by this Agreement or requested by the Buyer; provided that a material adverse effect described in any of the foregoing clauses (A) through (E) may be taken into account to the extent the Company and its Subsidiaries are disproportionately affected thereby relative to other companies in the industries in which the Company and its Subsidiaries operate. As used in this Agreement, "knowledge" means, with respect to the Company, the actual knowledge of Savneet Singh Bryan Menar, Cathy King and Matthew Cicchinelli in each case, after reasonable inquiry of such person's direct reports.

(b) Authorization; Enforcement; Validity. The Company has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, the Registration Rights Agreement, the Investor Rights Agreement and the Warrant (collectively, the "**Transaction Documents**") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, the issuance of the Purchased Shares and the reservation for issuance and the issuance of the Warrant Shares issuable upon the exercise of the Buyer's rights under the Warrant, have been duly authorized by the Company's Board of Directors (the "**Board**") and (other than the filing with the SEC of a Form D and one or more registration statements (as defined in the Registration Rights Agreement) in accordance with the requirements of the Registration Rights Agreement and other filings as may be required by state securities agencies) no further filing, consent or authorization is required by the Company, the Board or its stockholders (other than the Required Stockholder Approval (as defined in the Warrant) with respect to the issuance of any Excess Warrant Shares (as defined in the Warrant)). This Agreement has been duly and validly authorized, executed and delivered by the Company, and the other Transaction Documents have been duly and validly authorized by the Company and, at the Closing Date, will have been duly executed and delivered by the Company and constitute and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to applicable creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(c) Issuance of Securities. The issuance of the Purchased Shares has been duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. The issuance of the Warrant has been duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof. Upon exercise of the Buyer's rights under the Warrant in accordance with the terms therein including the payment of the consideration required upon exercise thereunder, the Warrant Shares will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming in part the accuracy of each of the representations and warranties of the Buyer set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Purchased Shares and Warrant are, and with respect to the Warrant Shares at the time of issuance will be, is exempt from registration under the 1933 Act.

(d) Compliance with Existing Agreements. Neither the Company nor any of its Subsidiaries is: (i) in violation of its certificate of incorporation, by-laws or other organizational documents (the "**Charter Documents**"); (ii) in violation of any U.S. or non-U.S. federal, state or local statute, law or ordinance, or any judgment, decree, rule, regulation, order or injunction of any U.S. or non-U.S. federal, state, local or other governmental or regulatory authority, including the rules, listing requirements and regulations of the New York Stock Exchange (the "**Principal Market**"), governmental or regulatory agency or body, court, arbitrator or self-regulatory organization (each, a "**Governmental Authority**"), applicable to any of them or any of their respective properties (collectively, "**Applicable Law**"); or (iii) in breach of or default under any agreement, bond, debenture, note, loan or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other instrument to which any of them is a party or by which any of them or their respective property is bound (collectively, the "**Applicable Agreements**"), except, in the case of clauses (ii) and (iii) for such violations, breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents. All Applicable Agreements that are material to the Company and its Subsidiaries, taken as a whole, are in full force and effect and are legal, valid and binding obligations. There exists no condition that, with notice or the passage of time or otherwise, would constitute or cause (a) a violation of the Charter Documents, (b) a violation of Applicable Laws, or (c) a breach of, imposition of any penalty or default or a "Debt Repayment Triggering Event" (as defined below) under any Applicable Agreement, except, in the case of clauses (b) and (c), for any such violations, breaches, penalties, defaults or Debt Repayment Triggering Events as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents. As used in this agreement, a "**Debt Repayment Triggering Event**" means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any bond, debenture or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other instrument (or any Person acting on such holder's behalf) the right to require the acceleration, repurchase, redemption or repayment of all or any portion of such indebtedness, indenture, mortgage, deed of trust, lease or any other instrument by the Company or any of its Subsidiaries or any of their respective properties.

(e) No Conflicts. Neither the execution, delivery or performance of the Transaction Documents nor the consummation of any of the transactions contemplated hereby and thereby will conflict with, violate, constitute a breach of or a default (with notice, the passage of time or otherwise) or a Debt Repayment Triggering Event under, or result in the imposition of a Lien on any assets of the Company or any of its Subsidiaries, the imposition of any penalty or a Debt Repayment Triggering Event under or pursuant to (i) the Charter Documents, (ii) any Applicable Agreement, (iii) any Applicable Law or (iv) any order, writ, judgment, injunction, decree, determination or award binding upon or affecting the Company, except in the case of clauses (ii) and (iii) for such conflicts, violations, breaches, penalties, defaults or events that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(f) Consents. Subject to receipt of the Required Stockholder Approval (as defined in the Warrant) with respect to the issuance of any Excess Warrant Shares (as defined in the Warrant), the Company is not required to obtain any consent, approval, authorization, permit, declaration or order of, or make any filing or registration with (other than the filing with the Commission of a Form D and one or more registration statements in accordance with the requirements of the Registration Rights Agreement, other filings as may be required by state securities agencies and the listing of the Purchased Shares and the Warrant Shares on the Principal Market), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date (or in the case of the filings detailed above, which filings will be made after the Closing Date, will be made within the time period required by Applicable Law), and, other than the Required Stockholder Approval (as defined in the Warrant) with respect to the issuance of any Excess Warrant Shares (as defined in the Warrant), the Company and its Subsidiaries are unaware of any facts or circumstances that might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the consent, registration, application or filings pursuant to the preceding sentence. The Company is not in violation of the listing requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock in the foreseeable future, except as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(g) No General Solicitation; Broker Fees. Neither the Company, nor any of its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by the Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby.

(h) No Integrated Offering. None of the Company nor its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the 1933 Act, whether through integration with prior offerings, the Prism Acquisition Transaction or otherwise, or cause this offering of the Securities to require the approval of the stockholders of the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, under the rules and regulations of the Principal Market (other than the Required Stockholder Approval (as defined in the Warrant) with respect to the issuance of any Excess Warrant Shares (as defined in the Warrant).

(i) SEC Documents; Financial Statements; Shell Company Status.

(i) Since December 31, 2018, the Company has timely filed or furnished all the SEC Documents required to be filed or furnished by it with the Commission pursuant to Section 13(a) or 15(d) of 1934 Act. As of their respective filing or being furnished (or if amended or supplemented, as of the date of such amendment or supplement, or, in the case of an SEC Document that is a registration statement filed pursuant to the 1933 Act or a proxy statement filed pursuant to the 1934 Act, on the date of effectiveness of such SEC Document or date of the applicable meeting, respectively), the SEC Documents complied or will comply, as applicable, with the applicable requirements of the 1933 Act, the 1934 Act and the Sarbanes-Oxley Act of 2002, as amended (and in each case, the rules and regulations of the Commission promulgated thereunder), in each case as in effect at such time, and none of the SEC Documents, at the time they were filed or furnished, or will be filed or furnished, with the Commission (or, if amended or supplemented, the date of the filing of such amendment or supplement, with respect to the disclosures that were so amended or supplemented or, in the case of an SEC Document that is a registration statement filed pursuant to the 1933 Act or a proxy statement filed pursuant to the 1934 Act, on the date of effectiveness of such SEC Document or date of the applicable meeting, respectively), contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made or will be made, not misleading. For purposes of this Agreement, "**SEC Documents**" means all reports, schedules, forms, statements and other documents required to be filed and so filed by the Company with the Commission under Sections 12, 13, 14 or 15(d) of the 1934 Act and all exhibits included therein and financial statements (including the consolidated balance sheets and consolidated statements of operation, comprehensive loss, changes in stockholders' equity and cash flows), notes and schedules thereto and documents incorporated by reference therein. The Company is currently eligible to register securities on Form S-3.

(ii) To the knowledge of the Company, (i) none of the SEC Documents filed or furnished since December 31, 2018 is subject to any pending proceeding by or before the SEC, and (ii) there are no outstanding or unresolved comments received from the Commission with respect to any of the SEC Documents filed or furnished since December 31, 2018.

(iii) None of its Subsidiaries of the Company is subject to the reporting requirements of Section 13(a) or 15(d) of the 1934 Act.

(iv) The Company has established and maintains disclosure controls and procedures and a system of internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the 1934 Act) in accordance with Rule 13a-15 under the 1934 Act. Since December 31, 2019, neither the Company nor any of its Subsidiaries has identified or been made aware of (i) any "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over and procedures relating to financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been publicly disclosed or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(v) The financial statements filed with the Commission as part of the SEC Documents present fairly in all material respects the financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries, as of the respective dates and for the respective periods to which they apply and have been prepared in accordance with generally accepted accounting principles of the United States ("**GAAP**") applied on a consistent basis throughout the periods involved (except as such inconsistency may be expressly stated in the related notes thereto) and the requirements of Regulation S-X. All financial, statistical and market and industry data contained in the SEC Documents are fairly and accurately presented in all material respects and are based on or derived from sources that the Company reasonably believes to be reliable and accurate.

(vi) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the consolidated balance sheet (or the notes thereto) of the Company and its Subsidiaries included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 (the "**Balance Sheet Date**"), (ii) incurred after the Balance Sheet Date in the ordinary course of the Company's business, (iii) as expressly contemplated by the Transaction Documents, the TRowe Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction or otherwise incurred in connection with the transactions contemplated hereby and thereby, or (iv) that have been discharged or paid prior to the date of this Agreement.

(vii) Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract, agreement or arrangement (including any contract, agreement or arrangement relating to any transaction or relationship between or among the Company or one or more of its Subsidiaries, on the one hand, and any other Person, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the 1933 Act).

(viii) The Company is not, and has not been at any time, an issuer identified in Rule 144(i)(1).

(j) Absence of Certain Changes. Since December 31, 2020, (a) except for the execution and performance of this Agreement and the other Transaction Documents, the TRowe Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction and the discussions, negotiations and transactions related hereto and thereto, the business of the Company and its Subsidiaries has been carried on and conducted in all material respects in the ordinary course of business, and (b) there has not been any Material Adverse Effect or any event, change or occurrence that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(k) All Necessary Permits, etc. Each of the Company and its Subsidiaries possess all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and has made all declarations and filings with, all Governmental Authorities, presently required or necessary to conduct their respective businesses ("**Permits**"), except where the failure to possess such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and, to the knowledge of the Company, none of the Company or its Subsidiaries has received or, to the knowledge of the Company, has any reason to believe it will receive any notice of any proceeding relating to revocation or modification of any such Permit, except where such revocation or modification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Equity Capitalization. The authorized capital stock of the Company consists of (i) 58,000,000 shares of Common Stock, par value $0.02 per share, of which as of 5:00 P.M. (New York time) on April 7, 2021 (the "**Capitalization Date**") and prior to the issuance of the Purchased Shares, 23,104,309 shares are issued and 21,962,118 shares outstanding, (A) 2,107,362 Common Shares are reserved for issuance under the Company's equity incentive plans, of which the Company has granted options to purchase 899,172 Common Shares at a weighted average exercise price of $14.28 per share, and 372,111 Common Shares are issuable upon vesting of outstanding restricted stock units; (B) 43,265 Common Shares are reserved for issuance upon vesting of restricted stock units issued in connection with the Company's assumption of awards granted by AccSys, LLC, a wholly owned Subsidiary of the Company ("**Restaurant Magic**"), under its long term incentive plan prior to the closing of the Company's acquisition of Restaurant Magic (together with the Company equity incentive plans in clause (A), (the "**Company Equity Plans**"), and (C) an aggregate of 4,338,323 Common Shares are reserved for issuance in connection with conversions of the Company's 2.875% Convertible Senior Notes due 2026 and 4.500% Convertible Senior Notes due 2024 (together, the "**Convertible Notes**"), to the extent that holders elect to convert the notes and the Company elects to satisfy conversions of the notes through physical settlement, and (ii) 1,000,000 shares of preferred stock, par value $0.02 per share, none of which are issued and outstanding. Since the Capitalization Date and through the date of this Agreement, other than those in connection with the Prism Acquisition Transaction, the Transaction Documents and the TRowe Transaction Documents, no Company Equity Plan has been amended or otherwise modified and no Common Shares, options to purchase Common Shares, restricted stock units or any warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or any of its Subsidiaries to issue or to sell any shares of capital stock or other securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, valued by reference to, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries have been repurchased or redeemed or issued (other than with respect to the exercise, vesting or settlement of the options to purchase Common Shares, restricted stock and restricted stock units outstanding prior to the Capitalization Date and pursuant to the terms of the applicable Company Equity Plan in effect on the Capitalization Date), and no Shares have been issued or reserved for issuance and no foregoing rights have been granted, except pursuant to the terms of the applicable Company Equity Plan in effect on the Capitalization Date or the Convertible Notes. All of such issued and outstanding shares are, or upon issuance will be validly issued, fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. The Company has reserved for issuance that number of shares of Common Stock that are issuable under the Warrant and when issued upon exercise of the Buyer's rights thereof in accordance with the Warrant will be issued, fully paid and non-assessable and will not be subject to any preemptive right (other than pursuant to the Investor Rights Agreement) or any restriction on transfer under Applicable Law, contract or agreement (other than those restrictions solely arising under or relating to applicable securities laws). None of the outstanding Common Shares prior to the issuance of the Purchased Shares were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. Except as set forth above in this clause (l) or as contemplated by the Transaction Documents, the TRowe Transaction Documents and the Prism Transaction Documents, including the Common Shares to be issued to stockholders, option holders and warrantholders of Prism in connection with the Prism Acquisition Transaction and the options of Prism assumed by the Company pursuant to the Prism Merger Agreement, there are no outstanding (i) options, warrants, preemptive rights, rights of first refusal or other rights to purchase from the Company or any of its Subsidiaries, (ii) agreements, contracts, arrangements or other obligations of the Company or any of its Subsidiaries to issue or (iii) other rights to convert into or exchange any securities for, in the case of each of clauses (i) through (iii), shares of capital stock of or other ownership or equity interests in the Company or any of its Subsidiaries. Except as otherwise provided in the Warrant, the Registration Rights Agreement, the TRowe Transaction Documents and the Prism Transaction Documents, there are no outstanding rights or obligations of the Company to register with the Commission or obligations to repurchase or redeem any of its equity securities. The rights, preferences, privileges, and restrictions of the Common Stock are as stated in the Charter Documents. Neither the Company nor any of its Subsidiaries is a party to any voting agreement or similar agreement with respect to the capital stock or other securities of the Company or any of its Subsidiaries. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the most recent SEC Documents filed prior to the date of this Agreement fairly present in all material respects all material information regarding such plans, arrangements, options and rights.

(m) Indebtedness. Other than the Indenture, dated as of February 10, 2020, between the Company, as Issuer, and the Bank of New York Mellon Trust Company, N.A., as Trustee or the Indenture, dated as of April 15, 2019, between the Company, as Issuer, and the Bank of New York Mellon Trust Company, N.A., as Trustee, the Convertible Notes and the Owl Rock Transaction Documents, the Company is not party to any material loan or credit agreement, indenture, debenture, note, bond, mortgage or deed of trust.

(n) Principal Market Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the 1934 Act and are listed on the Principal Market, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Shares under the 1934 Act or delisting the Common Shares from the Principal Market. The Company has not received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. The Company is in compliance with all applicable rules, listing requirements and regulations of the Principal Market.

(o) No Material Actions or Proceedings. (i) There are no stop orders in effect suspending the qualification or exemption from qualification of any of the Securities in any jurisdiction and no proceedings for that purpose have been commenced or are pending or, to the knowledge of the Company, pending or contemplated and (ii) there is no action, claim, suit, demand, hearing, notice of violation or deficiency, or proceeding pending or, to the knowledge of the Company, threatened or contemplated by any Person or Governmental Authorities that, with respect to clauses (i) and (ii) of this paragraph that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(p) Employee Relations. (i) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union; (ii) there is no union representation question existing with respect to the employees of the Company, and, to the knowledge of the Company, no union organizing activities are taking place that, could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (iii) to the knowledge of the Company, no union organizing or decertification efforts are underway or threatened against the Company or any of its Subsidiaries; (iv) no labor strike, work stoppage, slowdown or other material labor dispute is pending against the Company or any of its Subsidiaries, or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries; (v) there is no worker's compensation liability, experience or matter that could be reasonably expected to have a Material Adverse Effect; (vi) to the knowledge of the Company, there is no threatened or pending liability against the Company or any of its Subsidiaries pursuant to the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local law; (vii) there is no employment-related charge, complaint, grievance, investigation, unfair labor practice claim or inquiry of any kind, pending against the Company or any of its Subsidiaries that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (viii) to the knowledge of the Company, no employee or agent of the Company or any of its Subsidiaries has committed any act or omission giving rise to liability for any violation identified in subsection (vi) and (vii) above, other than, with respect to those identified in subsection (vii), such acts or omissions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (x) no term or condition of employment exists through arbitration awards, settlement agreements or side agreement that is contrary to the express terms of any applicable collective bargaining agreement.

(q) Title. Each of the Company and its Subsidiaries has good, marketable and valid title to all material real property owned by it and good title to all material personal property owned by it and good and valid title to all material leasehold estates in real and personal property being leased by it and, as of the Closing Date, will be free and clear of all Liens other than those that do not interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries in a manner that is material to the Company and its Subsidiaries, taken as a whole.

(r) Intellectual Property Rights.

(i) Each of the Company and its Subsidiaries owns, or is licensed to use, all patents, patent rights, inventions, copyrights, trade secrets, know-how (including unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, domain names, trade names and other intellectual property rights and all applications and registrations therefor, in each case, anywhere in the world (collectively, "**Intellectual Property Rights**") necessary for the conduct of its businesses as now conducted and as presently proposed to be conducted, except where failure to own or possess a license to use such Intellectual Property Rights would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) All material Intellectual Property Rights that are owned by the Company or any of its Subsidiaries (collectively, "**Owned IP**") that are issued by, registered with, renewed by or the subject of a pending application before any Governmental Authority or domain name registrar are, to the knowledge of the Company, subsisting, valid and enforceable.

(iii) Neither the Company nor any of its Subsidiaries has received any claim, notice, invitation to license or similar communication within the three-year period prior to the date hereof (A) contesting or challenging the use, validity, enforceability or ownership of any Owned IP, or (B) alleging that the Company or any of its Subsidiaries or any of their respective products or services infringes, misappropriates or otherwise violates the Intellectual Property Rights of any Person, in each case of clauses (A) and (B), except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) No funding, facilities or resources of a Governmental Authority, university, or other educational institution or research center was used in the development of any Owned IP, and no Governmental Authority, university, or other educational institution or research center has any claim or right in or to any Owned IP, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) In the three-year period prior to the date hereof, there has been no unauthorized access to or unauthorized use of any technology devices, computers, Software, servers, networks, or other information technology equipment, or any data stored therein or processed thereby, or any associated documentation, in each case, used by the Company or any of its Subsidiaries in a manner that, individually or in the aggregate, has resulted in or is reasonably likely to result in a Material Adverse Effect. "**Software**" means any computer program, application, middleware, firmware, microcode and other software, in each case, whether source code, object code or other form or format.

(vi) The Company and each of its Subsidiaries have complied with all of their respective policies, contractual and fiduciary obligations, and with all Applicable Laws, in each case, regarding Personal Information, including with respect to the collection, use, storage, processing, transmission, transfer (including cross-border transfers), disclosure and protection of Personal Information, and no Person has gained unauthorized access to or misused any Personal Information, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. "Personal Information" means (i) any information that identifies or could reasonably be used to identify an individual, browser, device or household, or (ii) is considered "personally identifiable information," "personal information," "personal data" or a similar term under any Applicable Laws.

(vii) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no proprietary Software of the Company or any of its Subsidiaries contains, is derived from, or links to any Software that is governed by an any license that requires, as a condition of modification, licensing, conveyance, distribution or provision of Software subject to such license, that such Software or other Software combined, linked or distributed with or derived from such Software (or any modifications or derivative works thereof) be disclosed, licensed, conveyed, distributed or made available in source code form and/or on a royalty-free basis (including for the purpose of making additional copies or derivative works).

(s) Environmental Laws. Each of the Company and its Subsidiaries is (i) in compliance with any and all applicable U.S. or non-U.S. federal, state and local laws and regulations relating to health and safety, or the pollution or the protection of the environment or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous or toxic substances of wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) has received and is in compliance with all Permits, licenses or other approvals required of them under applicable Environmental Laws to conduct its businesses and (iii) has not received notice of, and is not aware of, any actual or potential liability for damages to natural resources or the investigation or remediation of any disposal, release or existence of hazardous or toxic substances or wastes, pollutants or contaminants, in each case except where such non-compliance with Environmental Laws, failure to receive and comply with required permits, licenses or other approvals, or liability would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(t) Investment Company Status. The Company is not and, after giving effect to the transactions contemplated by the Transaction Documents, Prism Acquisition Transaction and the Owl Rock Transaction, the Company will not be, individually or on a consolidated basis, an "investment company" that is required to be registered under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"); and following the Closing, the Company and its Subsidiaries, including Prism, intend to conduct their businesses in a manner so as not to be required to register under the Investment Company Act.

(u) Tax Status. All Tax (as hereinafter defined) returns required to be filed by the Company and each of its Subsidiaries have been filed and all such returns are true, complete and correct in all material respects. All material Taxes that are due from the Company and its Subsidiaries have been paid other than those (i) currently payable without penalty or interest or (ii) being contested in good faith and by appropriate proceedings and for which adequate accruals have been established in accordance with GAAP applied on a consistent basis throughout the periods involved. The accruals on the books and records of the Company and its Subsidiaries in respect of any material Tax liability for any period not finally determined are adequate to meet any assessments of Tax for any such period. For purposes of this Agreement, the term "**Tax**" and "**Taxes**" shall mean all U.S. and non-U.S. federal, state, and local taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax or penalties applicable thereto.

(v) No Disqualification Events. With respect to the issuance of the Securities, none of the Company, any of its predecessors, any Affiliated issuer, any director, executive officer, other officer of the Company, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act except for items covered by Rule 506(d)(2) or (d)(3).

(w) Illegal Payments; FCPA Violations. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since December 31, 2019, neither of the Company nor any of its Subsidiaries nor any director, officer, or employee of the Company or any of its Subsidiaries, nor to the knowledge of the Company, any agent, representative, consultant or Affiliate acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its Subsidiaries (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made or taken any act in furtherance of an offer, promise, or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or public international organization, or any political party, party official, or candidate for political office; (iii) otherwise violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, authorized, requested, or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment or benefit.

(x) Economic Sanctions. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company is not in contravention of any sanction, and has not engaged in any conduct sanctionable, under U.S. economic sanctions laws, including Applicable Laws administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, 31 C.F.R. Part V, the Iran Sanctions Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act, the Iran Threat Reduction and Syria Human Rights Act, the Iran Freedom and Counter Proliferation Act of 2012, and any executive order issued pursuant to any of the foregoing.

(y) Government Contracts. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) neither Company nor any of its Subsidiaries has received any written notice that it is, and, to the knowledge of the Company none of the Company, its Subsidiaries and their respective employees is (or since December 31, 2018 has been) under administrative, civil or criminal investigation, indictment or information by any Governmental Authority (except as to routine security investigations); (ii) there is no pending or, to the knowledge of the Company, threatened audit or investigation by any Governmental Authority of the Company, its Subsidiaries or their respective employees with respect to any alleged material irregularity, misstatement, omission or violation of Law arising under or relating to any Applicable Agreement that (x) is between the Company or any of its Subsidiaries and a Governmental Authority or (y) is entered into by the Company or any of its Subsidiaries as a subcontractor (at any tier) in connection with a contract or agreement between another Person and a Governmental Authority (a "**Government Contract**" and the relevant Governmental Authority that is the direct or end customer in any Government Contract, the "**End Customer**"); and (iii) all costs, fees, profit and other charges and expenses of any nature that have been charged, and all sums invoiced, under Government Contracts have been properly chargeable or invoiced to such Government Contract, and were charged or invoiced in amounts consistent with the requirements of such Government Contract and Applicable Law. To the knowledge of the Company, during the twelve (12) months prior to the date of this Agreement, the relationships of the Company and its Subsidiaries with the End Customers are reasonable commercial working relationships and no senior officer of the Company has received written notice that any of the End Customers has terminated or adversely changed in any material respect its commercial relationship with the Company or any of its Subsidiaries under any Government Contract (including through termination of or changes to any relevant prime contract).

(z) No Rights Agreements; Anti-Takeover Provisions. As of the date of this Agreement, neither the Company nor any of its Subsidiaries is party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan. The Board has taken all necessary actions to ensure that no restrictions included in any "control share acquisition," "fair price," "moratorium," "business combination" or other state anti-takeover law is, or as of the Closing will be, applicable to the transactions contemplated hereby, including the Company's issuance of shares of the Purchased Shares and any issuance pursuant to the Warrant or the Investor Rights Agreement.

(aa) No Other Representations or Warranties of the Buyers. The Company acknowledges and agrees that none of the Buyer or any of its Affiliates makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Company or any of its Subsidiaries to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement, nor will anything in this Agreement operate to limit any claim by the Company or any of its Subsidiaries for actual and intentional fraud.

4. COVENANTS.

(a) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities if required under Regulation D and shall provide a copy thereof to any Buyer promptly upon such Buyer's request. Following the Closing Date, the Company shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States. The Company shall provide the Buyer and its legal counsel with a reasonable opportunity to review and comment upon drafts of all documents to be submitted to or filed with the SEC, whether publicly or not, in connection with the transactions contemplated hereby and by the other Transaction Documents and give reasonable consideration to all such comments.

(b) Reporting Status. Until the earlier of (x) a Change of Control or (y) the date on which either (1) the Investors (as defined in the Registration Rights Agreement) no longer hold any Securities or (2) the Warrant has expired in accordance with its terms or has been earlier terminated by the parties thereto, the Company shall timely file all reports required to be filed with the Commission pursuant to the 1934 Act, and the Company shall use reasonable best efforts to maintain its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such filing, and the Company shall use reasonable best efforts to maintain its eligibility to register the Purchased Shares and Warrant Shares in accordance with the Registration Rights Agreement for resale by the Investors on Form S-3. For purposes of this Agreement, "**Change of Control**" means, at any time, the occurrence of any of the following events or circumstances: (i) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the 1934 Act) shall (A) become the "beneficial owner" (within the meaning of Section 13(d) of the 1934 Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities or (B) otherwise acquire, directly or indirectly, the power to direct or cause the direction of the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise, (ii) persons who were (A) directors of the Company on the date hereof or (B) appointed by directors who were directors of the Company on the date hereof or were nominated or approved by directors who were directors of the Company on the date hereof shall cease to occupy a majority of the seats (excluding vacant seats) on the Board, (iii) the consummation of a merger or consolidation of the Company with or into any other Person, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation or (iv) any direct or indirect sale, transfer or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole (it being agreed that the sale, transfer or other disposition by any Person of the capital stock of or other ownership or equity interests of any Subsidiary constitutes an indirect sale, transfer or disposition of the assets of such Subsidiary).

(c) Use of Proceeds. The Company shall use the proceeds from the sale of the Purchased Shares in connection with the Prism Acquisition Transaction.

(d) Fees and Expenses. Except as otherwise set forth in any of the Transaction Documents, each party to this Agreement shall bear its own fees and expenses in connection with the sale of the Securities to the Buyer, the Company shall reimburse the Buyer for all reasonable and documented out-of-pocket costs and expenses, including legal fees, expenses, other professional fees and expenses, and all reasonable out-of-pocket due diligence expenses, in an aggregate amount not to exceed $125,000 minus the amount the Company reimburses TRowe pursuant to the TRowe Purchase Agreement, incurred by the Buyer in connection with the transactions contemplated by this Agreement. It being understood that, the foregoing reimbursement obligation shall not be contingent on the Closing or the consummation of the Prism Acquisition Transaction.

(e) Transfer or Resale. The Buyer shall not Transfer or offer to Transfer the Securities unless (i) in the case of the Purchased Shares or, when issued upon exercise of the Warrant, the Warrant Shares, such Securities are subsequently registered pursuant to the terms of the Registration Rights Agreement, (ii) such Transfer is made to the Company or to an Affiliate of the Buyer (provided each such Affiliate agrees to be bound by this Section 4(e), Section 4(g), Section 4(h) and provisions in Section 8 (to the extent relevant to the foregoing) of this Agreement and makes the same representations and warranties set forth in Section 2(a), Section 2(b), Section 2(d), Section 2(e), Section 2(f), Section 2(h), Section 2(i), Section 2(k) and Section 2(l) of this Agreement), or (iii) such Securities may be Transferred pursuant to (A) Rule 144 promulgated under the 1933 Act or (B) another valid exemption from registration under the 1933 Act and the rules and regulations of the Commission thereunder. In the case that a Buyer is permitted to Transfer the Securities and, if applicable, provides satisfactory evidence to the Company with respect to any Transfer pursuant to subsection (iii) of the foregoing that such Transfer is pursuant to a valid exemption from registration under the 1933 Act and the rules and regulations of the Commission thereunder, the Company shall, at the request of the holder of such Securities, issue such book-entry Securities to the holder or the applicable transferee of such Securities by electronic delivery (x) if eligible and requested by the holder or applicable transferee, on the applicable balance account at The Depository Trust Company, or (y) on the books of the Company or its transfer agent. For purposes of this Section 4(e), "**Transfer**" means, with respect to the Securities, to sell, offer, pledge, contract to sell, grant any option, right or contract to purchase, or otherwise transfer (including by gift or operation of law), dispose of, hypothecate or encumber, directly or indirectly, such Securities.

(f) Disclosure of Transactions and Other Material Information. On the date of this Agreement, the Company shall issue a press release regarding the transactions contemplated by the Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction (the "**Disclosed Transactions**") and no later than 5:30 p.m. New York City local time on the first business day following the date of this Agreement, the Company shall file a Current Report on Form 8-K, in each case, reasonably acceptable to the Buyer, describing the terms of the Disclosed Transactions in the form required by the 1934 Act and attaching the Transaction Documents as exhibits to such filing (which shall not include schedules or exhibits not customarily filed with the SEC). In furtherance of the foregoing, the Company shall provide the Buyer and its legal counsel with a reasonable opportunity to review and comment upon drafts of all documents to be publicly disclosed or filed with the Commission in connection with the Disclosed Transactions and give reasonable consideration to all such comments. Notwithstanding anything in this Agreement to the contrary, any statement included in any Company press release, public filing or other public statement that is attributed to Buyer, Ronald M. Shaich or any of their Affiliates shall be subject to prior approval of Buyer or Ronald M. Shaich.

(g) Legends.

(i) The book-entry accounts maintained by the Company's transfer agent representing the Purchased Shares and, when issued upon exercise of the Warrant, the Warrant Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against Transfer of such Purchased Shares and Warrant Shares bearing such legend):

> NEITHER THE ISSUANCE AND SALE OF THESE SECURITIES HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933.

(ii) At the request of a holder of the Purchased Shares or Warrant Shares or a transferee pursuant to Section 4(e), the Company shall reasonably cooperate with such holder to obtain reasonably satisfactory evidence that the legend set forth in Section 4(g)(i) above is not required in order to establish compliance with any provisions of the 1933 Act and remove the legend set forth in Section 4(g)(i) above shall from the applicable Securities on the book-entry accounts maintained by the Company's transfer agent representing such Securities if such legend is not required in order to establish compliance with any provisions of the 1933 Act.

(h) Transfer Taxes. The Company shall pay any and all documentary, stamp and similar issue or transfer tax incurred in connection with this Agreement. However, in the case of the exercise of the Warrant, the Company shall not be required to pay any tax or duty that may be payable in respect of any Transfer involved in the issue and delivery of Warrant Shares issuable upon such exercise to a beneficial owner other than the beneficial owner of the Warrant immediately prior to such exercise, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

(i) Tax Treatment. No later than ninety (90) days after the Closing Date, the Buyer shall engage a nationally recognized valuation expert reasonably acceptable to the Company, to conduct a valuation of the Warrant as of the date of their issuance. The Buyer shall promptly provide the Company with such valuation once it has been prepared by such valuation expert. The Buyer and the Company shall allocate the Purchase Price in accordance with such valuation for all U.S. tax purposes. The Buyer shall pay any and all costs of conducting such valuation.

(j) Reporting. The Company shall reasonably cooperate with the Buyer to provide any information to the Buyer (or make such information available to the Buyer) as the Buyer reasonably requests that the Company has in its actual or constructive possession (or any of the Company's Subsidiaries have in their actual or constructive possession), for purposes of any tax reporting, filing obligation or regulatory requirement of the Buyer in connection with (i) the ownership by the Buyer of any interest in the Company, (ii) any transaction between the Buyer, on the one hand, and the Company or any of its Subsidiaries, on the other hand, and (iii) the status of any Subsidiary of the Company for U.S. federal, state or local tax purposes as a foreign corporation or as a "controlled foreign corporation" within the meaning of Section 957 of the Code, including any filing obligation pursuant to Sections 6038, 6038B and 6046 of the Code. As used in this Agreement, the "**Code**" means the Internal Revenue Code of 1986, as amended. The Company shall use its commercially reasonable efforts to cause its transfer agent to respond to reasonable requests for information (which is not otherwise publicly available) made by the Buyer or its auditors related to the actual holdings of the Buyer, its permitted assigns or its accounts.

(k) Investment Company. So long as the Buyer holds any Securities, the Company will not take any actions that would be reasonably likely to cause it to be an "investment company," or a company controlled by an "investment company" other than the Buyer, as such terms are defined in the Investment Company Act.

(l) Principal Market Listing. To the extent it has not already done so, promptly following the execution of this Agreement, the Company shall apply to cause the Purchased Shares and the Warrant Shares to be approved for listing on the Principal Market. The Company shall use its reasonable best efforts to cause the Purchased Shares and the Warrant Shares (subject to the receipt of the Required Stockholder Approval with respect to the issuance of any Excess Warrant Shares) to be approved for listing on the Principal Market, subject to official notice of issuance.

(m) The Prism Acquisition Transaction. Subject to the terms and conditions set forth herein, in the Prism Transaction Documents and the Owl Rock Transaction Documents, the Company shall use its reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable to consummate (i) the Prism Acquisition Transaction, including the Prism Merger, in each case, in accordance with the terms of the Prism Acquisition Transaction Documents and (b) the Owl Rock Transaction in accordance with the terms of the Owl Rock Transaction Documents.

5. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Purchased Shares to the Buyer at the Closing, is subject to the satisfaction, at or before the Closing Date of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived (in whole or in part) by the Company at any time in its sole discretion by providing the Buyer with prior written notice thereof:

(i) The Company has consummated (or shall consummate concurrently with the Closing) the Prism Acquisition Transaction in accordance with the terms of the Prism Merger Agreement.

(ii) The Buyer shall have executed each of the Transaction Documents and delivered the same to the Company.

(iii) The Buyer shall have delivered the Aggregate Purchase Price to the Company at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company, subject to receipt of evidence of issuance referred to in Section 6(a)(ii)(B).

(iv) The Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Buyer at or prior to the Closing Date.

(v) The Buyer shall have executed the form of representation letter in favor of Goldman Sachs & Co. LLC in substantially the same form as Exhibit D attached hereto.

6. CONDITIONS TO THE BUYER'S OBLIGATION TO PURCHASE.

(a) The obligation of the Buyer to purchase the Purchased Shares at the Closing is subject to the satisfaction of each of the following conditions, provided that these conditions are for the Buyer's sole benefit and may be waived (in whole or in part) by the Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) The Company has consummated (or shall consummate concurrently with the Closing) the Prism Acquisition Transaction in accordance with the terms of the Prism Merger Agreement.

(ii) The Company shall have (A) duly executed and delivered to the Buyer each of the Transaction Documents and (B) issued to the Buyer in book-entry form the Purchased Shares at the Closing and delivered to the Buyer reasonably available evidence of the Purchased Shares credited to the Buyer's book-entry account maintained by the transfer agent of the Company.

(iii) The Buyer shall have received the opinion of Gibson, Dunn & Crutcher LLP, the Company's outside counsel, dated as of the Closing Date, in substantially the form of Exhibit E attached hereto.

(iv) The Company shall have delivered to the Buyer a certificate, executed by the Secretary of the Company and dated as of the Closing Date, certifying as to the resolutions consistent with Section 3(b) as adopted by the Board in a form reasonably acceptable to the Buyer and the Company's Charter Documents, in the form attached hereto as Exhibit F.

(v) The Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(vi) The Purchased Shares and the Warrant Shares, (I) shall be approved and designated for quotation or listed on the Principal Market, subject to official notice of issuance, and (II) shall not be suspended, in each case, on the Closing Date, by the Commission or the Principal Market from trading on the Principal Market nor shall suspension by the Commission or the Principal Market have been threatened, as of the Closing Date, either (A) in writing by the Commission or the Principal Market or (B) by falling below the minimum listing maintenance requirements of the Principal Market.

7. MISCELLANEOUS.

(a) Specific Performance. The Buyer, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other party hereto would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that the Buyer, on the one hand, and the Company, on the other hand (in each case, the "**Moving Party**"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 7(a) is not the exclusive remedy for any violation of this Agreement.

(b) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7(g). Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(c) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(d) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(e) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) Entire Agreement; Amendment and Waiver. This Agreement, the other Transaction Documents and the Prism Transaction Documents supersede all other prior or contemporaneous agreements and understandings, both written and oral, between the Buyer, the Company, their Affiliates and Persons acting on their behalf with respect to the subject matter hereof and thereof, and this Agreement, the other Transaction Documents, and the instruments referenced herein and therein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to any such matters. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Buyer; provided that the conditions to each of the respective parties' obligations to consummate the transactions contemplated by this Agreement are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law; provided, however, that any such waiver shall only be effective if made in a written instrument duly executed and delivered by the party against whom the waiver is to be effective. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement or any of the other Transaction Documents must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail, in each case properly addressed to the party to receive the same; or (iii) one business day after deposit with an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier); provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one business day after e-mail by dispatch pursuant to the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Bryan Menar
Cathy King
E-mail: bryan_menar@partech.com
cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to the Buyer:

PAR Act III, LLC
23 Prescott St.
Brookline, MA 02446
Attention: Ron Shaich
E-mail: ronshaich@act3holdings.com

with a copy to (for informational purposes only):

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matthew B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, and recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service or receipt by e-mail in accordance with clause (i) or (ii) above, respectively.

(h) Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, and permitted assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Buyer. The Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company, except to an Affiliate of the Buyer (provided each such Affiliate agrees to be bound by Section 4(e), Section 4(g), Section 4(h) and provisions in Section 8 (to the extent relevant to the foregoing) of this Agreement and makes the same representations and warranties set forth in Section 2(a), Section 2(b), Section 2(d), Section 2(e), Section 2(f), Section 2(h), Section 2(i), Section 2(k) and Section 2(l) of this Agreement).

(i) No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(j) Survival. The representations and warranties of the Company contained in Section 3 and the representations and warranties of the Buyer contained in Sections 2(d) through (g) shall survive the Closing until the twelve (12) month anniversary of the Closing. The covenants and agreements of the parties set forth in Section 4 and this Section 7 shall survive the Closing in accordance with their terms.

(k) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

(l) Interpretation.

(i) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated.

(ii) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(iii) The words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement.

(iv) Unless otherwise specified in this Agreement, the term "dollars" and the symbol "$" mean U.S. dollars for purposes of this Agreement and all amounts in this Agreement shall be paid in U.S. dollars.

(v) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(vi) Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, in each case, as of the applicable date or during the applicable period of time.

(vii) Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh

Name: Savneet Singh
Title: President and
Chief Executive Officer

[*Signature Page to Securities Purchase Agreement*]

IN WITNESS WHEREOF, the Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

PAR Act III, LLC

By: /s/ Ronald M. Shaich

Name: Ronald M. Shaich
Title: Chief Executive Officer

[*Signature Page to Securities Purchase Agreement*]

Exhibit 10.3

Execution Version

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (the "**Agreement**"), dated as of April 8, 2021, by and between PAR Technology Corporation, a Delaware corporation (the "**Company**"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "**Buyer**" and collectively, the "**Buyers**").

WHEREAS:

A. The Company and each Buyer are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506(b) of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the 1933 Act.

B. Each Buyer wishes to purchase, severally and not jointly, and the Company wishes to sell at the Closing (as defined in Section 1(a)) to the Buyers, upon the terms and conditions stated in this Agreement, an aggregate of 2,279,412 shares of common stock, par value $0.02 per share, of the Company (the "**Common Stock**" and such shares, the "**Common Shares**").

C. As a condition precedent to the Closing, the parties hereto will execute and deliver, among other things, a Registration Rights Agreement, substantially in the form attached hereto as Exhibit A (the "**Registration Rights Agreement**").

D. The shares of Common Stock issuable pursuant to this Agreement are referred to herein as the "**Purchased Shares**".

NOW, THEREFORE, the Company and each Buyer hereby agree as follows:

1. PURCHASE AND SALE OF PURCHASED SHARES.

(a) Purchase of the Common Stock. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 5 and 6 below, the Company shall issue and sell to each Buyer free and clear of any liens, security interests, mortgages, pledges, charges, equities, claims or restrictions on transferability or encumbrances of any kind (collectively, "**Liens**") (other than Liens incurred by such Buyer, restrictions arising under applicable securities laws, or restrictions imposed by the Transaction Documents (as defined in Section 3(b)), and each Buyer agrees, severally and not jointly, to purchase from the Company on the Closing Date (as defined in Section 1(b)), such number of Purchased Shares indicated next to such Buyer's name on the signature pages hereto (the "**Closing**").

(b) Closing Date. The date, time and place of the Closing (the "**Closing Date**") shall be on the date hereof as promptly as practicable after notice of satisfaction (or waiver) of the conditions to the Closing set forth in Sections 5 and 6, remotely by electronic exchange of Closing documentation (or such other date, time and place as is mutually agreed to by the Company and the Buyer).

(c) Purchase Price. Each Buyer shall pay $68.00 for each Purchased Share to be purchased by the Buyer at the Closing (the "**Purchase Price**"), for the aggregate Purchase Price paid by such Buyer as set forth on the signature pages hereto (the "**Aggregate Purchase Price**").

(d) Form of Payment. On the Closing Date, (i) the Company shall issue to the Buyer in book-entry form its Purchased Shares, and (ii) subject to the receipt of evidence of issuance of the Purchased Shares referred to in Section 6(a)(ii)(B), each Buyer shall pay its Aggregate Purchase Price to the Company for its Purchased Shares at the Closing, by wire transfer of immediately available funds in accordance with the Company's written wire instructions that have been confirmed telephonically by the parties prior to or on the Closing Date.

2. BUYER'S REPRESENTATIONS AND WARRANTIES. Each Buyer, severally and not jointly, represents and warrants that:

(a) Organization and Qualification. The Buyer is duly organized and validly existing and in good standing under the laws of the jurisdiction in which it is formed, and has the requisite power and authorization to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted. The Buyer is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect. As used in this Agreement, "**Buyer Material Adverse Effect**" means any change, effect, event, occurrence or development that would prevent, materially delay, or materially impair the Buyer's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(b) Consents. The Buyer is not required to obtain any consent, authorization or order of, or make any filing or registration with any Governmental Authority (as defined in Section 3(d)) or any other Person (as defined in Section 2(d)), in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement, and the Buyer is unaware of any facts or circumstances that might prevent the Buyer from obtaining or effecting any of the consent, registration, application or filings pursuant to the preceding sentence.

(c) Sufficient Funds. At the Closing, the Buyer will have available funds necessary to consummate the purchase of its Purchased Shares and pay to the Company its Aggregate Purchase Price, as contemplated by Section 1(c).

(d) No Public Sale or Distribution. The Buyer is acquiring the applicable Purchased Shares for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act. The Buyer does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Purchased Shares. For purposes of this Agreement, "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(e) Accredited Investor Status. The Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D. The Buyer (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment with respect to the Purchased Shares and (ii) can bear the economic risk of (A) an investment in the Purchased Shares indefinitely and (B) a total loss in respect of such investment.

(f) Reliance on Exemptions. The Buyer understands that the Purchased Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire the Purchased Shares. Prior to the Closing, the Buyer is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and the Buyer is not a "beneficial owner" of more than 10% of the shares of Common Stock (as defined for purposes of Rule 13d-3 of the Securities Exchange Act of 1934, as amended (the "**1934 Act**")).

(g) Information. The Buyer and its advisors, if any, have been furnished with or have had full access to all materials relating to the business, finances and operations of the Company and of Punchh Inc. ("**Prism**") and materials relating to the offer and sale of the Purchased Shares that have been requested by the Buyer. The Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company or its representatives. The Buyer has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Purchased Shares.

(h) No Governmental Review. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Purchased Shares or the fairness or suitability of the investment in the Purchased Shares nor have such authorities passed upon or endorsed the merits of the offering of the Purchased Shares.

(i) Transfer or Resale. The Buyer acknowledges that: (i) the Purchased Shares have not been and are not being registered under the 1933 Act or any state securities laws, (ii) the Buyer cannot sell, transfer, or otherwise dispose of any of the Purchased Shares, except in compliance with the Transaction Documents and the registration requirements or exemption provisions of the 1933 Act and any other applicable securities laws; and (iii) neither the Company nor any other Person is under any obligation to register the Purchased Shares under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder (except pursuant to the Registration Rights Agreement).

(j) Brokers; Finders. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisors or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated by the Transaction Documents based upon arrangements made by or on behalf of the Buyer.

(k) Authorization; Validity; Enforcement. The Buyer has the requisite power and authority to enter into and perform its obligations under the Transaction Documents. The execution and delivery of this Agreement and the other Transaction Documents by the Buyer and the consummation by the Buyer of the transactions contemplated hereby and thereby have been, or when executed will be, duly authorized by the Buyer. This Agreement and the other Transaction Documents have been duly and validly authorized, executed and delivered on behalf of the Buyer and shall constitute the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms, except as such enforceability may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to applicable creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(l) No Conflicts. The execution, delivery and performance by the Buyer of this Agreement and the other Transaction Documents and the consummation by the Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Buyer or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and applicable laws of any foreign, federal, and other state laws) applicable to the Buyer or by which any property or asset of the Buyer is bound or affected, in each case other than as would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(m) No Other Company Representations or Warranties. The Buyer acknowledges and agrees that neither the Company nor any of its Subsidiaries (as defined in Section 3(a)) makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3 and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement. In connection with the due diligence investigation of the Company by the Buyer and its representatives, the Buyer and its representatives have received from the Company and its representatives certain estimates, projections, forecasts and other forward-looking information, as well as certain business plan information containing such information, regarding the Company and its Subsidiaries and their respective businesses and operations, including information regarding the Prism Acquisition Transaction (as defined in Section 3(a)), the Securities Purchase Agreement, dated as of the date hereof, between the Company and PAR Act III (as defined in the Registration Rights Agreement) and made available to Buyers prior to or contemporaneously with the execution and delivery of this Agreement (the "**PAR Act Purchase Agreement**"), the Registration Rights Agreement, dated as of the date hereof, between the Company and PAR Act III and made available to Buyers prior to or contemporaneously with the execution and delivery of this Agreement (together with the PAR Act Purchase Agreement, the "**PAR Act Transaction Documents**"), and the Owl Rock Transaction. The Buyer hereby acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts and other forward-looking statements, as well as in such business plans, with which the Buyer is familiar, that the Buyer is making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts and other forward-looking information, as well as such business plans, so furnished to the Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, forward-looking information or business plans), and that except for the representations and warranties made by the Company in Section 3 and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement, the Buyer will have no claim against the Company or any of its Subsidiaries, or any of their respective representatives, with respect thereto. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Buyer or any of its Affiliates to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement and in any certificate or other Transaction Document delivered by the Company in connection with this Agreement, nor will anything in this Agreement operate to limit any claim by the Buyer or any of its Affiliates for actual and intentional fraud. As used in this Agreement, "**Affiliate**" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person as of the date which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, "control," when used with respect to any Person, has the meaning specified in Rule 12b-2 under the 1934 Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

3. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Buyer that except as (A) disclosed (to the extent that the relevance of any such disclosure with respect to any section of this Agreement is reasonably apparent on its face) in SEC Documents (as defined in Section 3(i)) filed or furnished after December 31, 2019 and prior to the date hereof (other than disclosure contained in the "Risk Factors" or "Forward Looking Statements" sections of such SEC Documents or any other sections to the extent such disclosures are similarly predictive or forward-looking in nature), or (B) set forth in the confidential disclosure letter delivered by the Company to the Buyers prior to the execution of this Agreement (the "**Company Disclosure Letter**") (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to, and shall be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement to the extent that it is reasonably apparent on its face that such information, item or matter is relevant to such other section or subsection):

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized or formed and validly existing and in good standing under the laws of the jurisdiction in which they are organized or formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted, except, solely with respect to the Company's Subsidiaries, to the extent that the failure to be in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined below). Each of the Company and its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

As used in this Agreement, "**Subsidiary**" means any company, partnership, limited liability company, joint venture, joint stock company, trust, unincorporated organization or other entity for which the Company directly or indirectly owns (a) at least 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests) or (b) sufficient voting rights to elect at least a majority of the board of directors or other governing body. As used in this Agreement, "**Material Adverse Effect**" means any change, effect, event, occurrence or development that has a material adverse effect on the business, operations, results of operations, capital, properties, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, provided, that, none of the following shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (A) changes generally affecting the industry in which the Company or its Subsidiaries operate; (B) general changes in the economic or business conditions or securities, credit, financial or other capital markets of the U.S. or any other region outside of the U.S. (including changes generally in prevailing interest rates, currency exchange rates, credit markets and price levels or trading volumes) in which the Company or its Subsidiaries operate; (C) earthquakes, fires, floods, hurricanes, tornadoes, pandemics, or similar catastrophes or acts of god or weather conditions, and any state or federal government orders or other actions in response thereto, (D) political conditions, including acts of terrorism, war, sabotage, national or international calamity, military action or any other similar event or any change, escalation or worsening thereof after the date hereof (other than cyberattacks targeting the Company or its Subsidiaries); (E) any change in GAAP (as defined in Section 3(i)) or any change in laws of general applicability (or interpretation or enforcement thereof) after the date hereof; (F) the execution of this Agreement, the other Transaction Documents, the PAR Act Transaction Documents, or the Agreement and Plan of Merger dated as of April 8, 2021, among the Company, ParTech Inc., Sliver Merger Sub, Inc., Prism and Fortis Advisors, LLC (the "**Prism Merger Agreement**"), the Escrow Agreement (as defined under the Prism Merger Agreement) and the Joinder Agreement (as defined under the Prism Merger Agreement) and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (collectively, the "**Prism Transaction Documents**") and all transactions contemplated thereby, including the Merger (as defined in the Prism Merger Agreement), the "**Prism Merger**" and collectively, the "**Prism Acquisition Transaction**"), or the public disclosure of such agreements or the transactions contemplated hereby and thereby (including the impact thereof on the relationships, contractual or otherwise, of the Company or any of its Subsidiaries with employees, labor unions (if any), financing sources, customers, suppliers, or partners that the Company can reasonably establish resulted from the execution or the public disclosure of this Agreement, the other Transaction Documents, the PAR Act Transaction Documents or the Prism Transaction Documents, or the Prism Acquisition Transaction); (G) the execution of the Credit Agreement, dated as of April 8, 2021, among the Company, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, Owl Rock First Lien Master Fund, L.P., and Owl Rock Capital Advisors LLC and made available to Buyer prior to or contemporaneously with the execution and delivery of this Agreement (the "**Owl Rock Transaction Documents**") and the transactions contemplated thereby (the "**Owl Rock Transaction**"), (H) any failure to meet internal or published projections, forecasts or revenue or earning predictions for any period; (I) a decline in the trading price or trading volume of the Company's Common Stock; provided that, with respect to clauses (H) and (I), the underlying causes of such failure, decline or change not otherwise excluded herein may be considered in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect; and (J) any actions taken, or failure to take any action, in each case, to which the Buyer has expressly given advance written approval or consent, that is affirmatively required by this Agreement or requested by the Buyer; provided that a material adverse effect described in any of the foregoing clauses (A) through (E) may be taken into account to the extent the Company and its Subsidiaries are disproportionately affected thereby relative to other companies in the industries in which the Company and its Subsidiaries operate. As used in this Agreement, "knowledge" means, with respect to the Company, the actual knowledge of Savneet Singh Bryan Menar, Cathy King and Matthew Cicchinelli in each case, after reasonable inquiry of such person's direct reports.

(b) Authorization; Enforcement; Validity. The Company has all necessary power and authority to execute, deliver and perform its obligations under this Agreement and the Registration Rights Agreement (collectively, the "**Transaction Documents**") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, the issuance of the Purchased Shares, have been duly authorized by the Company's Board of Directors (the "**Board**") and (other than the filing with the SEC of a Form D and one or more registration statements (as defined in the Registration Rights Agreement) in accordance with the requirements of the Registration Rights Agreement and other filings as may be required by state securities agencies) no further filing, consent or authorization is required by the Company, the Board or its stockholders . This Agreement has been duly and validly authorized, executed and delivered by the Company, and the other Transaction Documents have been duly and validly authorized by the Company and, at the Closing Date, will have been duly executed and delivered by the Company and constitute and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to applicable creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(c) Issuance of Purchased Shares. The issuance of the Purchased Shares has been duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock. Assuming in part the accuracy of each of the representations and warranties of the Buyer set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Purchased Shares is exempt from registration under the 1933 Act.

(d) Compliance with Existing Agreements. Neither the Company nor any of its Subsidiaries is: (i) in violation of its certificate of incorporation, by-laws or other organizational documents (the "**Charter Documents**"); (ii) in violation of any U.S. or non-U.S. federal, state or local statute, law or ordinance, or any judgment, decree, rule, regulation, order or injunction of any U.S. or non-U.S. federal, state, local or other governmental or regulatory authority, including the rules, listing requirements and regulations of the New York Stock Exchange (the "**Principal Market**"), governmental or regulatory agency or body, court, arbitrator or self-regulatory organization (each, a "**Governmental Authority**"), applicable to any of them or any of their respective properties (collectively, "**Applicable Law**"); or (iii) in breach of or default under any agreement, bond, debenture, note, loan or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other instrument to which any of them is a party or by which any of them or their respective property is bound (collectively, the "**Applicable Agreements**"), except, in the case of clauses (ii) and (iii) for such violations, breaches or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents. All Applicable Agreements that are material to the Company and its Subsidiaries, taken as a whole, are in full force and effect and are legal, valid and binding obligations. There exists no condition that, with notice or the passage of time or otherwise, would constitute or cause (a) a violation of the Charter Documents, (b) a violation of Applicable Laws, or (c) a breach of, imposition of any penalty or default or a "Debt Repayment Triggering Event" (as defined below) under any Applicable Agreement, except, in the case of clauses (b) and (c), for any such violations, breaches, penalties, defaults or Debt Repayment Triggering Events as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents. As used in this agreement, a "**Debt Repayment Triggering Event**" means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any bond, debenture or other evidence of indebtedness, indenture, mortgage, deed of trust, lease or any other instrument (or any Person acting on such holder's behalf) the right to require the acceleration, repurchase, redemption or repayment of all or any portion of such indebtedness, indenture, mortgage, deed of trust, lease or any other instrument by the Company or any of its Subsidiaries or any of their respective properties.

(e) No Conflicts. Neither the execution, delivery or performance of the Transaction Documents nor the consummation of any of the transactions contemplated hereby and thereby will conflict with, violate, constitute a breach of or a default (with notice, the passage of time or otherwise) or a Debt Repayment Triggering Event under, or result in the imposition of a Lien on any assets of the Company or any of its Subsidiaries, the imposition of any penalty or a Debt Repayment Triggering Event under or pursuant to (i) the Charter Documents, (ii) any Applicable Agreement, (iii) any Applicable Law or (iv) any order, writ, judgment, injunction, decree, determination or award binding upon or affecting the Company, except in the case of clauses (ii) and (iii) for such conflicts, violations, breaches, penalties, defaults or events that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(f) Consents. Subject to receipt of the Required Stockholder Approval (as defined in the PAR Act Purchase Agreement), the Company is not required to obtain any consent, approval, authorization, permit, declaration or order of, or make any filing or registration with (other than the filing with the Commission of a Form D and one or more registration statements in accordance with the requirements of the Registration Rights Agreement, other filings as may be required by state securities agencies and the listing of the Purchased Shares on the Principal Market), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents or the PAR Act Transaction Documents, in each case in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the Closing Date (or in the case of the filings detailed above, which filings will be made after the Closing Date, will be made within the time period required by Applicable Law), and, other than the Required Stockholder Approval, the Company and its Subsidiaries are unaware of any facts or circumstances that might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the consent, registration, application or filings pursuant to the preceding sentence. The Company is not in violation of the listing requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Common Stock in the foreseeable future, except as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(g) No General Solicitation; Broker Fees. Neither the Company, nor any of its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Purchased Shares. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Buyer or its investment advisor) relating to or arising out of the transactions contemplated hereby.

(h) No Integrated Offering. None of the Company nor its Subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Purchased Shares under the 1933 Act, whether through integration with prior offerings, the Prism Acquisition Transaction or otherwise, or cause this offering of the Purchased Shares to require the approval of the stockholders of the Company for purposes of the 1933 Act or any applicable stockholder approval provisions, including, under the rules and regulations of the Principal Market (other than the Required Stockholder Approval).

(i) SEC Documents; Financial Statements; Shell Company Status.

(i) Since December 31, 2018, the Company has timely filed or furnished all the SEC Documents required to be filed or furnished by it with the Commission pursuant to Section 13(a) or 15(d) of 1934 Act. As of their respective filing or being furnished (or if amended or supplemented, as of the date of such amendment or supplement, or, in the case of an SEC Document that is a registration statement filed pursuant to the 1933 Act or a proxy statement filed pursuant to the 1934 Act, on the date of effectiveness of such SEC Document or date of the applicable meeting, respectively), the SEC Documents complied or will comply, as applicable, with the applicable requirements of the 1933 Act, the 1934 Act and the Sarbanes-Oxley Act of 2002, as amended (and in each case, the rules and regulations of the Commission promulgated thereunder), in each case as in effect at such time, and none of the SEC Documents, at the time they were filed or furnished, or will be filed or furnished, with the Commission (or, if amended or supplemented, the date of the filing of such amendment or supplement, with respect to the disclosures that were so amended or supplemented or, in the case of an SEC Document that is a registration statement filed pursuant to the 1933 Act or a proxy statement filed pursuant to the 1934 Act, on the date of effectiveness of such SEC Document or date of the applicable meeting, respectively), contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made or will be made, not misleading. For purposes of this Agreement, "**SEC Documents**" means all reports, schedules, forms, statements and other documents required to be filed and so filed by the Company with the Commission under Sections 12, 13, 14 or 15(d) of the 1934 Act and all exhibits included therein and financial statements (including the consolidated balance sheets and consolidated statements of operation, comprehensive loss, changes in stockholders' equity and cash flows), notes and schedules thereto and documents incorporated by reference therein. The Company is currently eligible to register securities on Form S-3.

(ii) To the knowledge of the Company, (i) none of the SEC Documents filed or furnished since December 31, 2018 is subject to any pending proceeding by or before the SEC, and (ii) there are no outstanding or unresolved comments received from the Commission with respect to any of the SEC Documents filed or furnished since December 31, 2018.

(iii) None of its Subsidiaries of the Company is subject to the reporting requirements of Section 13(a) or 15(d) of the 1934 Act.

(iv) The Company has established and maintains disclosure controls and procedures and a system of internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the 1934 Act) in accordance with Rule 13a-15 under the 1934 Act. Since December 31, 2019, neither the Company nor any of its Subsidiaries has identified or been made aware of (i) any "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over and procedures relating to financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been publicly disclosed or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(v) The financial statements filed with the Commission as part of the SEC Documents present fairly in all material respects the financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries, as of the respective dates and for the respective periods to which they apply and have been prepared in accordance with generally accepted accounting principles of the United States ("**GAAP**") applied on a consistent basis throughout the periods involved (except as such inconsistency may be expressly stated in the related notes thereto) and the requirements of Regulation S-X. All financial, statistical and market and industry data contained in the SEC Documents are fairly and accurately presented in all material respects and are based on or derived from sources that the Company reasonably believes to be reliable and accurate.

(vi) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except liabilities (i) reflected or reserved against in the consolidated balance sheet (or the notes thereto) of the Company and its Subsidiaries included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020 (the "**Balance Sheet Date**"), (ii) incurred after the Balance Sheet Date in the ordinary course of the Company's business, (iii) as expressly contemplated by the Transaction Documents, the PAR Act Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction or otherwise incurred in connection with the transactions contemplated hereby and thereby, or (iv) that have been discharged or paid prior to the date of this Agreement.

(vii) Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract, agreement or arrangement (including any contract, agreement or arrangement relating to any transaction or relationship between or among the Company or one or more of its Subsidiaries, on the one hand, and any other Person, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K of the 1933 Act).

(viii) The Company is not, and has not been at any time, an issuer identified in Rule 144(i)(1).

(j) Absence of Certain Changes. Since December 31, 2020, (a) except for the execution and performance of this Agreement and the other Transaction Documents, the PAR Act Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction and the discussions, negotiations and transactions related hereto and thereto, the business of the Company and its Subsidiaries has been carried on and conducted in all material respects in the ordinary course of business, and (b) there has not been any Material Adverse Effect or any event, change or occurrence that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(k) All Necessary Permits, etc. Each of the Company and its Subsidiaries possess all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and has made all declarations and filings with, all Governmental Authorities, presently required or necessary to conduct their respective businesses ("**Permits**"), except where the failure to possess such Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and, to the knowledge of the Company, none of the Company or its Subsidiaries has received or, to the knowledge of the Company, has any reason to believe it will receive any notice of any proceeding relating to revocation or modification of any such Permit, except where such revocation or modification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Equity Capitalization. The authorized capital stock of the Company consists of (i) 58,000,000 shares of Common Stock, par value $0.02 per share, of which as of 5:00 P.M. (New York time) on April 7, 2021 (the "**Capitalization Date**") and prior to the issuance of the Purchased Shares, 23,104,309 shares are issued and 21,962,118 shares outstanding, (A) 2,107,362 Common Shares are reserved for issuance under the Company's equity incentive plans, of which the Company has granted options to purchase 899,172 Common Shares at a weighted average exercise price of $14.28 per share, and 372,111 Common Shares are issuable upon vesting of outstanding restricted stock units; (B) 43,265 Common Shares are reserved for issuance upon vesting of restricted stock units issued in connection with the Company's assumption of awards granted by AccSys, LLC, a wholly owned Subsidiary of the Company ("**Restaurant Magic**"), under its long term incentive plan prior to the closing of the Company's acquisition of Restaurant Magic (together with the Company equity incentive plans in clause (A), (the "**Company Equity Plans**"), and (C) an aggregate of 4,338,323 Common Shares are reserved for issuance in connection with conversions of the Company's 2.875% Convertible Senior Notes due 2026 and 4.500% Convertible Senior Notes due 2024 (together, the "**Convertible Notes**"), to the extent that holders elect to convert the notes and the Company elects to satisfy conversions of the notes through physical settlement, and (ii) 1,000,000 shares of preferred stock, par value $0.02 per share, none of which are issued and outstanding. Since the Capitalization Date and through the date of this Agreement, other than those in connection with the Prism Acquisition Transaction, the Transaction Documents and the PAR Act Transaction Documents, no Company Equity Plan has been amended or otherwise modified and no Common Shares, options to purchase Common Shares, restricted stock units or any warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or any of its Subsidiaries to issue or to sell any shares of capital stock or other securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, valued by reference to, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries have been repurchased or redeemed or issued (other than with respect to the exercise, vesting or settlement of the options to purchase Common Shares, restricted stock and restricted stock units outstanding prior to the Capitalization Date and pursuant to the terms of the applicable Company Equity Plan in effect on the Capitalization Date), and no Shares have been issued or reserved for issuance and no foregoing rights have been granted, except pursuant to the terms of the applicable Company Equity Plan in effect on the Capitalization Date or the Convertible Notes. All of such issued and outstanding shares are, or upon issuance will be validly issued, fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. None of the outstanding Common Shares prior to the issuance of the Purchased Shares were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. Except as set forth above in this clause (l) or as contemplated by the Transaction Documents, the PAR Act Transaction Documents and the Prism Transaction Documents, including the Common Shares to be issued to stockholders, option holders and warrantholders of Prism in connection with the Prism Acquisition Transaction and the options of Prism assumed by the Company pursuant to the Prism Merger Agreement, there are no outstanding (i) options, warrants, preemptive rights, rights of first refusal or other rights to purchase from the Company or any of its Subsidiaries, (ii) agreements, contracts, arrangements or other obligations of the Company or any of its Subsidiaries to issue or (iii) other rights to convert into or exchange any securities for, in the case of each of clauses (i) through (iii), shares of capital stock of or other ownership or equity interests in the Company or any of its Subsidiaries. Except as otherwise provided in the Registration Rights Agreement, the PAR Act Transaction Documents and the Prism Transaction Documents, there are no outstanding rights or obligations of the Company to register with the Commission or obligations to repurchase or redeem any of its equity securities. The rights, preferences, privileges, and restrictions of the Common Stock are as stated in the Charter Documents. Neither the Company nor any of its Subsidiaries is a party to any voting agreement or similar agreement with respect to the capital stock or other securities of the Company or any of its Subsidiaries. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the most recent SEC Documents filed prior to the date of this Agreement fairly present in all material respects all material information regarding such plans, arrangements, options and rights.

(m) Indebtedness. Other than the Indenture, dated as of February 10, 2020, between the Company, as Issuer, and the Bank of New York Mellon Trust Company, N.A., as Trustee or the Indenture, dated as of April 15, 2019, between the Company, as Issuer, and the Bank of New York Mellon Trust Company, N.A., as Trustee, the Convertible Notes and the Owl Rock Transaction Documents, the Company is not party to any material loan or credit agreement, indenture, debenture, note, bond, mortgage or deed of trust.

(n) Principal Market Listing. The Common Shares are registered pursuant to Section 12(b) or 12(g) of the 1934 Act and are listed on the Principal Market, and the Company has taken no action designed to, or reasonably likely to have the effect of, terminating the registration of the Common Shares under the 1934 Act or delisting the Common Shares from the Principal Market. The Company has not received any notification that the Commission or the Principal Market is contemplating terminating such registration or listing. The Company is in compliance with all applicable rules, listing requirements and regulations of the Principal Market.

(o) No Material Actions or Proceedings. (i) There are no stop orders in effect suspending the qualification or exemption from qualification of any of the Purchased Shares in any jurisdiction and no proceedings for that purpose have been commenced or are pending or, to the knowledge of the Company, pending or contemplated and (ii) there is no action, claim, suit, demand, hearing, notice of violation or deficiency, or proceeding pending or, to the knowledge of the Company, threatened or contemplated by any Person or Governmental Authorities that, with respect to clauses (i) and (ii) of this paragraph that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby or under any of the other Transaction Documents.

(p) Employee Relations. (i) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union; (ii) there is no union representation question existing with respect to the employees of the Company, and, to the knowledge of the Company, no union organizing activities are taking place that, could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (iii) to the knowledge of the Company, no union organizing or decertification efforts are underway or threatened against the Company or any of its Subsidiaries; (iv) no labor strike, work stoppage, slowdown or other material labor dispute is pending against the Company or any of its Subsidiaries, or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries; (v) there is no worker's compensation liability, experience or matter that could be reasonably expected to have a Material Adverse Effect; (vi) to the knowledge of the Company, there is no threatened or pending liability against the Company or any of its Subsidiaries pursuant to the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local law; (vii) there is no employment-related charge, complaint, grievance, investigation, unfair labor practice claim or inquiry of any kind, pending against the Company or any of its Subsidiaries that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (viii) to the knowledge of the Company, no employee or agent of the Company or any of its Subsidiaries has committed any act or omission giving rise to liability for any violation identified in subsection (vi) and (vii) above, other than, with respect to those identified in subsection (vii), such acts or omissions that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (x) no term or condition of employment exists through arbitration awards, settlement agreements or side agreement that is contrary to the express terms of any applicable collective bargaining agreement.

(q) Title. Each of the Company and its Subsidiaries has good, marketable and valid title to all material real property owned by it and good title to all material personal property owned by it and good and valid title to all material leasehold estates in real and personal property being leased by it and, as of the Closing Date, will be free and clear of all Liens other than those that do not interfere with the use made and proposed to be made of such property by the Company and its Subsidiaries in a manner that is material to the Company and its Subsidiaries, taken as a whole.

(r) Intellectual Property Rights.

(i) Each of the Company and its Subsidiaries owns, or is licensed to use, all patents, patent rights, inventions, copyrights, trade secrets, know-how (including unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, domain names, trade names and other intellectual property rights and all applications and registrations therefor, in each case, anywhere in the world (collectively, "**Intellectual Property Rights**") necessary for the conduct of its businesses as now conducted and as presently proposed to be conducted, except where failure to own or possess a license to use such Intellectual Property Rights would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) All material Intellectual Property Rights that are owned by the Company or any of its Subsidiaries (collectively, "**Owned IP**") that are issued by, registered with, renewed by or the subject of a pending application before any Governmental Authority or domain name registrar are, to the knowledge of the Company, subsisting, valid and enforceable.

(iii) Neither the Company nor any of its Subsidiaries has received any claim, notice, invitation to license or similar communication within the three-year period prior to the date hereof (A) contesting or challenging the use, validity, enforceability or ownership of any Owned IP, or (B) alleging that the Company or any of its Subsidiaries or any of their respective products or services infringes, misappropriates or otherwise violates the Intellectual Property Rights of any Person, in each case of clauses (A) and (B), except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) No funding, facilities or resources of a Governmental Authority, university, or other educational institution or research center was used in the development of any Owned IP, and no Governmental Authority, university, or other educational institution or research center has any claim or right in or to any Owned IP, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) In the three-year period prior to the date hereof, there has been no unauthorized access to or unauthorized use of any technology devices, computers, Software, servers, networks, or other information technology equipment, or any data stored therein or processed thereby, or any associated documentation, in each case, used by the Company or any of its Subsidiaries in a manner that, individually or in the aggregate, has resulted in or is reasonably likely to result in a Material Adverse Effect. "**Software**" means any computer program, application, middleware, firmware, microcode and other software, in each case, whether source code, object code or other form or format.

(vi) The Company and each of its Subsidiaries have complied with all of their respective policies, contractual and fiduciary obligations, and with all Applicable Laws, in each case, regarding Personal Information, including with respect to the collection, use, storage, processing, transmission, transfer (including cross-border transfers), disclosure and protection of Personal Information, and no Person has gained unauthorized access to or misused any Personal Information, in each case, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. "Personal Information" means (i) any information that identifies or could reasonably be used to identify an individual, browser, device or household, or (ii) is considered "personally identifiable information," "personal information," "personal data" or a similar term under any Applicable Laws.

(vii) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no proprietary Software of the Company or any of its Subsidiaries contains, is derived from, or links to any Software that is governed by an any license that requires, as a condition of modification, licensing, conveyance, distribution or provision of Software subject to such license, that such Software or other Software combined, linked or distributed with or derived from such Software (or any modifications or derivative works thereof) be disclosed, licensed, conveyed, distributed or made available in source code form and/or on a royalty-free basis (including for the purpose of making additional copies or derivative works).

(s) Environmental Laws. Each of the Company and its Subsidiaries is (i) in compliance with any and all applicable U.S. or non-U.S. federal, state and local laws and regulations relating to health and safety, or the pollution or the protection of the environment or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous or toxic substances of wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) has received and is in compliance with all Permits, licenses or other approvals required of them under applicable Environmental Laws to conduct its businesses and (iii) has not received notice of, and is not aware of, any actual or potential liability for damages to natural resources or the investigation or remediation of any disposal, release or existence of hazardous or toxic substances or wastes, pollutants or contaminants, in each case except where such non-compliance with Environmental Laws, failure to receive and comply with required permits, licenses or other approvals, or liability would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(t) Investment Company Status. The Company is not and, after giving effect to the transactions contemplated by the Transaction Documents, Prism Acquisition Transaction and the Owl Rock Transaction, the Company will not be, individually or on a consolidated basis, an "investment company" that is required to be registered under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"); and following the Closing, the Company and its Subsidiaries, including Prism, intend to conduct their businesses in a manner so as not to be required to register under the Investment Company Act.

(u) Tax Status. All Tax (as hereinafter defined) returns required to be filed by the Company and each of its Subsidiaries have been filed and all such returns are true, complete and correct in all material respects. All material Taxes that are due from the Company and its Subsidiaries have been paid other than those (i) currently payable without penalty or interest or (ii) being contested in good faith and by appropriate proceedings and for which adequate accruals have been established in accordance with GAAP applied on a consistent basis throughout the periods involved. The accruals on the books and records of the Company and its Subsidiaries in respect of any material Tax liability for any period not finally determined are adequate to meet any assessments of Tax for any such period. For purposes of this Agreement, the term "**Tax**" and "**Taxes**" shall mean all U.S. and non-U.S. federal, state, and local taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax or penalties applicable thereto.

(v) No Disqualification Events. With respect to the issuance of the Purchased Shares, none of the Company, any of its predecessors, any Affiliated issuer, any director, executive officer, other officer of the Company, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the 1933 Act) connected with the Company in any capacity at the time of sale is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the 1933 Act except for items covered by Rule 506(d)(2) or (d)(3).

(w) Illegal Payments; FCPA Violations. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since December 31, 2019, neither of the Company nor any of its Subsidiaries nor any director, officer, or employee of the Company or any of its Subsidiaries, nor to the knowledge of the Company, any agent, representative, consultant or Affiliate acting on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its Subsidiaries (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made or taken any act in furtherance of an offer, promise, or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government official or employee, including of any government-owned or controlled entity or public international organization, or any political party, party official, or candidate for political office; (iii) otherwise violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, or any other applicable anti-bribery or anti-corruption law; or (iv) made, offered, authorized, requested, or taken an act in furtherance of any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment or benefit.

(x) Economic Sanctions. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company is not in contravention of any sanction, and has not engaged in any conduct sanctionable, under U.S. economic sanctions laws, including Applicable Laws administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, 31 C.F.R. Part V, the Iran Sanctions Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act, the Iran Threat Reduction and Syria Human Rights Act, the Iran Freedom and Counter Proliferation Act of 2012, and any executive order issued pursuant to any of the foregoing.

(y) Government Contracts. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) neither Company nor any of its Subsidiaries has received any written notice that it is, and, to the knowledge of the Company none of the Company, its Subsidiaries and their respective employees is (or since December 31, 2018 has been) under administrative, civil or criminal investigation, indictment or information by any Governmental Authority (except as to routine security investigations); (ii) there is no pending or, to the knowledge of the Company, threatened audit or investigation by any Governmental Authority of the Company, its Subsidiaries or their respective employees with respect to any alleged material irregularity, misstatement, omission or violation of Law arising under or relating to any Applicable Agreement that (x) is between the Company or any of its Subsidiaries and a Governmental Authority or (y) is entered into by the Company or any of its Subsidiaries as a subcontractor (at any tier) in connection with a contract or agreement between another Person and a Governmental Authority (a "**Government Contract**" and the relevant Governmental Authority that is the direct or end customer in any Government Contract, the "**End Customer**"); and (iii) all costs, fees, profit and other charges and expenses of any nature that have been charged, and all sums invoiced, under Government Contracts have been properly chargeable or invoiced to such Government Contract, and were charged or invoiced in amounts consistent with the requirements of such Government Contract and Applicable Law. To the knowledge of the Company, during the twelve (12) months prior to the date of this Agreement, the relationships of the Company and its Subsidiaries with the End Customers are reasonable commercial working relationships and no senior officer of the Company has received written notice that any of the End Customers has terminated or adversely changed in any material respect its commercial relationship with the Company or any of its Subsidiaries under any Government Contract (including through termination of or changes to any relevant prime contract).

(z) No Rights Agreements; Anti-Takeover Provisions. As of the date of this Agreement, neither the Company nor any of its Subsidiaries is party to a stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan. The Board has taken all necessary actions to ensure that no restrictions included in any "control share acquisition," "fair price," "moratorium," "business combination" or other state anti-takeover law is, or as of the Closing will be, applicable to the transactions contemplated hereby, including the Company's issuance of shares of the Purchased Shares.

(aa) No Other Representations or Warranties of Buyer. The Company acknowledges and agrees that no Buyer and none of its Affiliates makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 2. Notwithstanding anything to the contrary herein, nothing in this Agreement shall limit the right of the Company or any of its Subsidiaries to rely on the representations, warranties, covenants and agreements expressly set forth in this Agreement, nor will anything in this Agreement operate to limit any claim by the Company or any of its Subsidiaries for actual and intentional fraud.

4. COVENANTS.

(a) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Purchased Shares if required under Regulation D and shall provide a copy thereof to any Buyer promptly upon such Buyer's request. Following the Closing Date, the Company shall make all filings and reports relating to the offer and sale of the Purchased Shares required under applicable securities or "Blue Sky" laws of the states of the United States. The Company shall provide each Buyer and its legal counsel with a reasonable opportunity to review and comment upon drafts of all documents to be submitted to or filed with the SEC, whether publicly or not, in connection with the transactions contemplated hereby and by the other Transaction Documents and give reasonable consideration to all such comments.

(b) Reporting Status. Until the earlier of (x) a Change of Control or (y) the date on which the Investors (as defined in the Registration Rights Agreement) no longer hold any Purchased Shares, the Company shall timely file all reports required to be filed with the Commission pursuant to the 1934 Act, and the Company shall use reasonable best efforts to maintain its status as an issuer required to file reports under the 1934 Act even if the 1934 Act or the rules and regulations thereunder would no longer require or otherwise permit such filing, and the Company shall use reasonable best efforts to maintain its eligibility to register the Purchased Shares in accordance with the Registration Rights Agreement for resale by the Investors on Form S-3. For purposes of this Agreement, "**Change of Control**" means, at any time, the occurrence of any of the following events or circumstances: (i) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the 1934 Act) shall (A) become the "beneficial owner" (within the meaning of Section 13(d) of the 1934 Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities or (B) otherwise acquire, directly or indirectly, the power to direct or cause the direction of the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise, (ii) persons who were (A) directors of the Company on the date hereof or (B) appointed by directors who were directors of the Company on the date hereof or were nominated or approved by directors who were directors of the Company on the date hereof shall cease to occupy a majority of the seats (excluding vacant seats) on the Board, (iii) the consummation of a merger or consolidation of the Company with or into any other Person, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation or (iv) any direct or indirect sale, transfer or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole (it being agreed that the sale, transfer or other disposition by any Person of the capital stock of or other ownership or equity interests of any Subsidiary constitutes an indirect sale, transfer or disposition of the assets of such Subsidiary).

(c) Use of Proceeds. The Company shall use the proceeds from the sale of the Purchased Shares in connection with the Prism Acquisition Transaction.

(d) Fees and Expenses. Except as otherwise set forth in any of the Transaction Documents, each party to this Agreement shall bear its own fees and expenses in connection with the sale of the Purchased Shares to the Buyers. The Company shall reimburse the Buyers for all reasonable and documented out-of-pocket costs and expenses, including legal fees, expenses, other professional fees and expenses, and all reasonable out-of-pocket due diligence expenses, in an aggregate amount not to exceed $25,000, incurred by the Buyers in connection with the transactions contemplated by this Agreement, it being understood that, the foregoing reimbursement obligation shall not be contingent on the Closing or the consummation of the Prism Acquisition Transaction.

(e) Transfer or Resale. No Buyer shall Transfer or offer to Transfer its Purchased Shares unless (i) such Purchased Shares are subsequently registered pursuant to the terms of the Registration Rights Agreement, (ii) such Transfer is made to the Company or to an Affiliate of the Buyer (provided each such Affiliate agrees to be bound by this Section 4(e), Section 4(g), Section 4(h) and provisions in Section 8 (to the extent relevant to the foregoing) of this Agreement and makes the same representations and warranties set forth in Section 2(a), Section 2(b), Section 2(d), Section 2(e), Section 2(f), Section 2(h), Section 2(i), Section 2(k) and Section 2(l) of this Agreement), or (iii) such Purchased Shares may be Transferred pursuant to (A) Rule 144 promulgated under the 1933 Act or (B) another valid exemption from registration under the 1933 Act and the rules and regulations of the Commission thereunder. In the case that a Buyer is permitted to Transfer the Purchased Shares and, if applicable, provides satisfactory evidence to the Company with respect to any Transfer pursuant to subsection (iii) of the foregoing that such Transfer is pursuant to a valid exemption from registration under the 1933 Act and the rules and regulations of the Commission thereunder, the Company shall, at the request of the holder of such Purchased Shares, issue such book-entry Purchased Shares to the holder or the applicable transferee of such Purchased Shares by electronic delivery (x) if eligible and requested by the holder or applicable transferee, on the applicable balance account at The Depository Trust Company, or (y) on the books of the Company or its transfer agent. For purposes of this Section 4(e), "**Transfer**" means, with respect to the Purchased Shares, to sell, offer, pledge, contract to sell, grant any option, right or contract to purchase, or otherwise transfer (including by gift or operation of law), dispose of, hypothecate or encumber, directly or indirectly, such Purchased Shares.

(f) Disclosure of Transactions and Other Material Information. On the date of this Agreement, the Company shall issue a press release regarding the transactions contemplated by the Transaction Documents, the Prism Acquisition Transaction and the Owl Rock Transaction and any other material, non-public information provided to any Buyer prior to such date (the "**Disclosed Transactions**") and no later than 5:30 p.m. New York City local time on the first business day following the date of this Agreement, the Company shall file a Current Report on Form 8-K, in each case, reasonably acceptable to the Buyers, describing the terms of the Disclosed Transactions in the form required by the 1934 Act and attaching the Transaction Documents as exhibits to such filing (which shall not include schedules or exhibits not customarily filed with the SEC). In furtherance of the foregoing, the Company shall provide each Buyer and its legal counsel with a reasonable opportunity to review and comment upon drafts of all documents to be publicly disclosed or filed with the Commission in connection with the Disclosed Transactions and give reasonable consideration to all such comments. Notwithstanding anything in this Agreement to the contrary, any statement included in any Company press release, public filing or other public statement that is attributed to Buyer, Ronald M. Shaich or any of their Affiliates shall be subject to prior approval of Buyer or Ronald M. Shaich. From and after the issuance of such press release and Form 8-K, Buyer shall not be in possession of any material, non-public information received from the Company or any of its officers, directors, employees or agents, and Buyer shall no longer be subject to any confidentiality or similar obligations under any current agreement, whether written or oral, with the Company or any of its Affiliates with respect to the Disclosed Transactions. Notwithstanding anything in this Agreement to the contrary, the Company shall not, without the prior written consent of Buyer, publicly disclose the name of Buyer or any of its Affiliates or advisors, or include the name of Buyer or any of its Affiliates or advisors (i) in any press release or marketing materials or (ii) in any filings with the Commission or any regulatory agency or trading market except (A) required by the federal securities law in connection with the Registration Statement, and (B), to the extent such disclosure is required by Applicable Laws, at the request of the Staff of the Commission or regulatory agency or under regulations of the Principal Market or by any other Governmental Authority, in which case the Company shall provide Buyer with prior written notice of such disclosure and an opportunity to review as set forth in this Section 4(f).

(g) Legends.

(i) The book-entry accounts maintained by the Company's transfer agent representing the Purchased Shares, except as set forth below, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against Transfer of such Purchased Shares bearing such legend):

> NEITHER THE ISSUANCE AND SALE OF THESE SECURITIES HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933.

(ii) At the request of a holder of the Purchased Shares or a transferee pursuant to Section 4(e), the Company shall reasonably cooperate with such holder to obtain reasonably satisfactory evidence that the legend set forth in Section 4(g)(i) above is not required in order to establish compliance with any provisions of the 1933 Act and remove the legend set forth in Section 4(g)(i) above shall from the Purchased Shares on the book-entry accounts maintained by the Company's transfer agent representing such Purchased Shares if such legend is not required in order to establish compliance with any provisions of the 1933 Act.

(h) Transfer Taxes. The Company shall pay any and all documentary, stamp and similar issue or transfer tax incurred in connection with this Agreement.

(i) [Intentionally omitted.]

(j) Reporting. The Company shall reasonably cooperate with each Buyer to provide any information to the Buyer (or make such information available to the Buyer) as such Buyer reasonably requests that the Company has in its actual or constructive possession (or any of the Company's Subsidiaries have in their actual or constructive possession), for purposes of any tax reporting, filing obligation or regulatory requirement of the Buyer in connection with (i) the ownership by the Buyer of any interest in the Company, (ii) any transaction between the Buyer, on the one hand, and the Company or any of its Subsidiaries, on the other hand, and (iii) the status of any Subsidiary of the Company for U.S. federal, state or local tax purposes as a foreign corporation or as a "controlled foreign corporation" within the meaning of Section 957 of the Code, including any filing obligation pursuant to Sections 6038, 6038B and 6046 of the Code. As used in this Agreement, the "**Code**" means the Internal Revenue Code of 1986, as amended. The Company shall use its commercially reasonable efforts to cause its transfer agent to respond to reasonable requests for information (which is not otherwise publicly available) made by any Buyer or its auditors related to the actual holdings of the Buyer, its permitted assigns or its accounts.

(k) Investment Company. So long as a Buyer holds any Purchased Shares, the Company will not take any actions that would be reasonably likely to cause it to be an "investment company," or a company controlled by an "investment company" other than the Buyer, as such terms are defined in the Investment Company Act.

(l) Principal Market Listing. To the extent it has not already done so, promptly following the execution of this Agreement, the Company shall apply to cause the Purchased Shares to be approved for listing on the Principal Market. The Company shall use its reasonable best efforts to cause the Purchased Shares to be approved for listing on the Principal Market, subject to official notice of issuance.

(m) The Prism Acquisition Transaction. Subject to the terms and conditions set forth herein, in the Prism Transaction Documents and the Owl Rock Transaction Documents, the Company shall use its reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable to consummate (i) the Prism Acquisition Transaction, including the Prism Merger, in each case, in accordance with the terms of the Prism Acquisition Transaction Documents and (b) the Owl Rock Transaction in accordance with the terms of the Owl Rock Transaction Documents.

5. CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL.

(a) The obligation of the Company hereunder to issue and sell the Purchased Shares to the Buyers at the Closing, is subject to the satisfaction, at or before the Closing Date of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived (in whole or in part) by the Company at any time in its sole discretion by providing the Buyers with prior written notice thereof:

(i) All conditions precedent to the Company's obligation to effect the Prism Acquisition Transaction shall have been satisfied or waived (other than those conditions that, by their nature, may only be satisfied at the consummation of such transaction but subject to the satisfaction or waiver thereof) and the Company shall consummate the closing of such transaction substantially concurrently with the Closing in accordance with the terms of the Prism Merger Agreement.

(ii) Each Buyer shall have executed each of the Transaction Documents and delivered the same to the Company.

(iii) Each Buyer shall have delivered its Aggregate Purchase Price to the Company at the Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company, subject to receipt of evidence of issuance referred to in Section 6(a)(ii)(B).

(iv) Each Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Buyer at or prior to the Closing Date.

(v) Each Buyer shall have executed the form of representation letter in favor of Goldman Sachs & Co. LLC in substantially the same form as Exhibit B attached hereto.

6. CONDITIONS TO EACH BUYER'S OBLIGATION TO PURCHASE.

(a) The obligation of each Buyer to purchase its Purchased Shares at the Closing is subject to the satisfaction of each of the following conditions, provided that these conditions are for the Buyer's sole benefit and may be waived (in whole or in part) by such Buyer at any time in its sole discretion by providing the Company with prior written notice thereof:

(i) All conditions precedent to the Company's obligation to effect the Prism Acquisition Transaction shall have been satisfied or waived (other than those conditions that, by their nature, may only be satisfied at the consummation of such transaction but subject to the satisfaction or waiver thereof) and the Company shall consummate the closing of such transaction substantially concurrently with the Closing in accordance with the terms of the Prism Merger Agreement.

(ii) The Company shall have (A) duly executed and delivered to the Buyer each of the Transaction Documents and (B) issued to the Buyer in book-entry form its Purchased Shares at the Closing and delivered to the Buyer including evidence of its Purchased Shares credited to the Buyer's book-entry account maintained by the transfer agent of the Company in the form acceptable to the Buyer.

(iii) The Buyer shall have received the opinion of Gibson, Dunn & Crutcher LLP, the Company's outside counsel, dated as of the Closing Date, in substantially the form of Exhibit C attached hereto.

(iv) The Company shall have delivered to the Buyer a certificate, executed by the Secretary of the Company and dated as of the Closing Date, certifying as to the resolutions consistent with Section 3(b) as adopted by the Board in a form reasonably acceptable to the Buyer and the Company's Charter Documents, in the form attached hereto as Exhibit D.

(v) The Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

(vi) The Purchased Shares (I) shall be approved and designated for quotation or listed on the Principal Market, subject to official notice of issuance, and (II) shall not be suspended, in each case, on the Closing Date, by the Commission or the Principal Market from trading on the Principal Market nor shall suspension by the Commission or the Principal Market have been threatened, as of the Closing Date, either (A) in writing by the Commission or the Principal Market or (B) by falling below the minimum listing maintenance requirements of the Principal Market.

7. MISCELLANEOUS.

(a) Specific Performance. Each Buyer, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other party hereto would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that each Buyer, on the one hand, and the Company, on the other hand (in each case, the "**Moving Party**"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 7(a) is not the exclusive remedy for any violation of this Agreement.

(b) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7(g). Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(c) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(d) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(e) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) Entire Agreement; Amendment and Waiver. This Agreement, the other Transaction Documents and the Prism Transaction Documents supersede all other prior or contemporaneous agreements and understandings, both written and oral, between each Buyer, the Company, their Affiliates and Persons acting on their behalf with respect to the subject matter hereof and thereof, and this Agreement, the other Transaction Documents, and the instruments referenced herein and therein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof and, except as specifically set forth herein or therein, neither the Company nor any Buyer makes any representation, warranty, covenant or undertaking with respect to any such matters. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and each Buyer; provided that the conditions to each of the respective parties' obligations to consummate the transactions contemplated by this Agreement are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law; provided, however, that any such waiver shall only be effective if made in a written instrument duly executed and delivered by the party against whom the waiver is to be effective. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement or any of the other Transaction Documents must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail, in each case properly addressed to the party to receive the same; or (iii) one business day after deposit with an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier); provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one business day after e-mail by dispatch pursuant to the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Bryan Menar
Cathy King
E-mail: bryan_menar@partech.com
cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to a Buyer: to the address set forth on the signature pages hereto.

or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, and recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service or receipt by e-mail in accordance with clause (i) or (ii) above, respectively.

(h) Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, and permitted assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Buyer. No Buyer shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Company, except to an Affiliate of the Buyer (provided each such Affiliate agrees to be bound by Section 4(e), Section 4(g), Section 4(h) and provisions in Section 8 (to the extent relevant to the foregoing) of this Agreement and makes the same representations and warranties set forth in Section 2(a), Section 2(b), Section 2(d), Section 2(e), Section 2(f), Section 2(h), Section 2(i), Section 2(k) and Section 2(l) of this Agreement).

(i) No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(j) Survival. The representations and warranties of the Company contained in Section 3 and the representations and warranties of each Buyer contained in Sections 2(d) through (g) shall survive the Closing until the twelve (12) month anniversary of the Closing. The covenants and agreements of the parties set forth in Section 4 and this Section 7 shall survive the Closing in accordance with their terms.

(k) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

(l) Interpretation.

(i) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated.

(ii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(iii) The words “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement.

(iv) Unless otherwise specified in this Agreement, the term “dollars” and the symbol “$” mean U.S. dollars for purposes of this Agreement and all amounts in this Agreement shall be paid in U.S. dollars.

(v) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(vi) Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, in each case, as of the applicable date or during the applicable period of time.

(vii) Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh
Name: Savneet Singh
Title: President and
Chief Executive Officer

[*Signature Page to Securities Purchase Agreement*]

IN WITNESS WHEREOF, each Buyer and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

The Funds and Accounts listed on Attachment A
Each fund, severally, and not jointly

By: T. Rowe Price Associates, Inc., investment adviser or subadviser, as applicable

By: /s/ Andrew Baek

Name: Andrew Baek
Title: Vice President

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: 410-345-2090
E-mail: andrew.baek@troweprice.com

[*Signature Page to Securities Purchase Agreement*]

T. ROWE PRICE ASSOCIATES, INC.
SCHEDULE "A" - PAR TECHNOLOGY CORPORATION
COMMON STOCK

$ 68.00000	Cost/Share

Fund Name	Quantity	Cost
T. Rowe Price Small-Cap Stock Fund, Inc.	953,391	$ 64,830,588.00
T. Rowe Price Institutional Small-Cap Stock Fund	555,173	$ 37,751,764.00
T. Rowe Price Spectrum Conservative Allocation Fund	7,454	$ 506,872.00
T. Rowe Price Spectrum Moderate Allocation Fund	11,684	$ 794,512.00
T. Rowe Price Spectrum Moderate Growth Allocation Fund	21,153	$ 1,438,404.00
T. Rowe Price Moderate Allocation Portfolio	883	$ 60,044.00
U.S. Small-Cap Stock Trust	48,091	$ 3,270,188.00
TD Mutual Funds - TD U.S. Small-Cap Equity Fund	49,607	$ 3,373,276.00
T. Rowe Price U.S. Small-Cap Core Equity Trust	292,819	$ 19,911,692.00
Minnesota Life Insurance Company	11,784	$ 801,312.00
Costco 401(k) Retirement Plan	49,643	$ 3,375,724.00
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund	12,552	$ 853,536.00
T. Rowe Price Small-Cap Value Fund, Inc.	192,603	$ 13,097,004.00
T. Rowe Price U.S. Small-Cap Value Equity Trust	66,590	$ 4,528,120.00
T. Rowe Price U.S. Equities Trust	3,656	$ 248,608.00
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund	2,329	$ 158,372.00
	2,279,412	$155,000,016.00

Exhibit 10.4

Execution Version

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of April 8, 2021, is made and entered into by and among PAR Technology Corporation, a Delaware corporation (the "Company"), and the investors listed on the Schedule of Investors attached hereto as Schedule 1 (each, an "Investor" and collectively, the "Investors").

WHEREAS, pursuant to the Securities Purchase Agreement by and among the Company and each of the Investors, dated as of April 8, 2021 (the "Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Purchase Agreement, to issue and sell, at the Closing, to the Investors 73,530 shares of the Company's common stock, par value $0.02 per share (the "Common Stock");

WHEREAS, pursuant to the Common Stock Purchase Warrant (the "Warrant") between the Company and PAR Act III, LLC, dated as of the date hereof (the "Warrant"), the Investors have agreed, upon the terms and subject to the conditions of the Warrant, at any time and from time to time on or prior to the close of business on April 8, 2026 but not thereafter, to subscribe for and purchase from the Company, up to 500,000 shares of the Common Stock (as subject to adjustment under the Warrant and together with any other capital stock of the Company then purchasable upon exercise of the Warrant in accordance with the terms of the Warrant, the "Warrant Shares");

WHEREAS, in accordance with the terms of the Purchase Agreement, the Company has agreed to provide Investors certain registration rights under the Securities Act of 1933 (the "1933 Act"), and the rules and regulations thereunder, and applicable state securities laws.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investors agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined in this Agreement that are defined in the Purchase Agreement shall have the respective meanings ascribed to such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"1933 Act" shall have the meaning set forth in the recitals of this Agreement.

"1934 Act" means the Securities Exchange Act of 1934 and the rules and regulations of the Commission thereunder.

"Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Automatic Shelf Registration Statement" means an "automatic shelf registration statement" as defined in Rule 405 under the 1933 Act.

"Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" shall have the meaning set forth in the recitals of this Agreement.

"Company" shall have the meaning set forth in the recitals of this Agreement.

"Effectiveness Deadline" means, with respect to any registration statement required to be filed to cover the resale by the Investors of the Registrable Securities pursuant to Section 2, (a) the date such registration statement is filed, if the Company is a WKSI as of such date and such registration statement is an Automatic Shelf Registration Statement eligible to become immediately effective upon filing pursuant to Rule 462 under the 1933 Act; or (b) if the Company is not a WKSI as of the date such registration statement is filed, the one hundred and twentieth (120th) day after the date of this Agreement. If applicable, the Effectiveness Deadline with respect to the Prospectus Supplement shall be the date the Prospectus Supplement is filed.

"Effectiveness Period" shall have the meaning set forth in Section 2(c).

"Electing Investors" means, with respect to a registration, each of the Investors that has Registrable Securities directly owned by such Investor included in such registration in accordance with Sections 2 or 6, as the case may be, as communicated in writing to the Company in accordance with Sections 2(a) or 6(a), as applicable.

"Excess Warrant Shares" shall have the meaning set forth in the Warrant.

"Existing Shelf Registration Statement" means the Company's Registration Statement on Form S-3 (File No. 333-249142), which became effective on September 30, 2020.

"Filing Deadline" means, with respect to the Prospectus Supplement or any registration statement required to be filed to cover the resale by Investors of Registrable Securities pursuant to Section 2, thirty (30) calendar days following the date of this Agreement; provided that, to the extent that the Company has not been provided the information regarding the Investors and their Registrable Securities in accordance with Section 13 at least two (2) Business Days prior to the Filing Deadline, then the such Filing Deadline shall be extended to the second (2nd) Business Day following the date on which such information is provided to the Company.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Freely Tradeable" means, with respect to any security, a security that is eligible to be sold by the holder thereof without any volume or manner of sale restrictions pursuant to Rule 144.

"Indemnified Party" shall have the meaning set forth in Section 12(c).

"Indemnifying Party" shall have the meaning set forth in Section 12(c).

"Investor Indemnitee" shall have the meaning set forth in Section 12(a).

"Investors" shall have the meaning set forth in the preamble of this Agreement.

"Moving Party" shall have the meaning set forth in Section 15(d).

"Other Securities" shall have the meaning set forth in Section 6(a).

"Piggyback Notice" shall have the meaning set forth in Section 6(a).

"Piggyback Registration" shall have the meaning set forth in Section 6(a).

"prospectus" means the prospectus included in a registration statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a registration statement, and all other amendments and supplements to the prospectus, including post-effective amendments.

"Prospectus Supplement" means a prospectus supplement to the Existing Shelf Registration Statement that registers the resale of the Registrable Securities hereunder.

"Purchase Agreement" shall have the meaning set forth in the recitals of this Agreement.

"register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement with the Commission in compliance with the 1933 Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement by the Commission.

"Registrable Securities" means, as of any date of determination, (a) any Common Stock issued to the Investors pursuant to the Purchase Agreement (whether or not subsequently transferred to any other Person), (b) the Warrant Shares other than Excess Warrant Shares, (c) subject to receipt of the Required Stockholder Approval (as defined in the Warrant), the Excess Warrant Shares (in each case of (b) and (c), whether or not such Warrant or any Warrant Shares are subsequently assigned or transferred to any other Person) and (d) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend, stock split, recapitalization or other distribution with respect to, or in exchange for, or in replacement of, the securities referenced in clauses (a), (b) and (c) above; provided that the term "Registrable Securities" shall exclude in all cases any securities that are sold pursuant to an effective registration statement under the 1933 Act or in compliance with Rule 144.

"Registration Expenses" means, with respect to any registration: (a) all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses; (b) all reasonable fees and expenses related to any registration of Registrable Securities by the Electing Investors (including the fees and disbursements of one legal counsel (and only one legal counsel) to the Electing Investors); and (c) all expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration; provided that Registration Expenses shall not include any Selling Expenses.

"registration statement" means any registration statement that is required to register the resale of the Registrable Securities under this Agreement, including the related prospectus and any pre- and post-effective amendments and supplements to each such registration statement or prospectus.

"Resale Shelf Registration" shall have the meaning set forth in Section 2(a).

"Resale Shelf Registration Statement" shall have the meaning set forth in Section 2(a).

"Rule 144" shall have the meaning set forth in Section 14.

"Selling Expenses" means all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the sale of Registrable Securities by the Electing Investors and all related fees and expenses of any counsel to the Electing Investors (other than such fees and expenses included in Registration Expenses).

"Shelf Offering" shall have the meaning set forth in Section 5.

"Shelf Registration" means the Resale Shelf Registration (as defined in Section 2(a)) or a Subsequent Shelf Registration (as defined in Section 2(d)), as applicable.

"Shelf Registration Statement" means the Resale Shelf Registration Statements or a Subsequent Shelf Registration Statement, as applicable.

"Subsequent Shelf Registration" shall have the meaning set forth in Section 2(d).

"Subsequent Shelf Registration Statement" shall have the meaning set forth in Section 2(d).

"Suspension Period" shall have the meaning set forth in Section 4.

"Take-Down Notice" shall have the meaning set forth in Section 5.

"TRowe" shall mean those certain funds and accounts advised by T. Rowe Price Associates, Inc., acting as investment adviser.

"TRowe Demand Registration" shall have the meaning set forth in Section 6(a).

"TRowe Registration Rights Agreement" shall mean the Registration Rights Agreement between the Company and TRowe, dated as of the date hereof.

"Underwriter Cutback" shall have the meaning set forth in Section 6(b).

"Underwritten Offering" shall have the meaning set forth in Section 3(a).

"Underwritten Offering Notice" shall have the meaning set forth in Section 3(a).

"Warrant" shall have the meaning set forth in the recitals of this Agreement.

"Warrant Shares" shall have the meaning set forth in the recitals of this Agreement.

"WKSI" means a "well known seasoned issuer" as defined in Rule 405 under the 1933 Act.

2. Registration.

(a) Subject to the terms and conditions of this Agreement and to the extent permitted by applicable law, the Company shall file, as promptly as reasonably practicable, but no later than the Filing Deadline, (i) the Prospectus Supplement, if the Company determines that registration through a Prospectus Supplement is appropriate in light of the Company's status as a WKSI, or (ii) a registration statement under the 1933 Act covering the sale or distribution from time to time by the Investors, on a delayed or continuous basis pursuant to Rule 415 of the 1933 Act of all the Registrable Securities and shall provide for the registration of such Registrable Securities for resale by such Investors in accordance with any reasonable method of distribution elected by the Investors (such registration, a "Resale Shelf Registration"). The registration statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form for such purposes) (the "Resale Shelf Registration Statement"), and if the Company is a WKSI as of the filing date and determines not to file a Prospectus Supplement as provided in (a)(i) above, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but in any event prior to the Effectiveness Deadline.

(b) Subject to the terms and conditions of this Agreement and to the extent permitted by applicable law, if applicable, upon receipt of the Required Stockholder Approval (as defined in the Warrant), the Company shall file, as promptly as reasonably practicable, and in any case, no later than thirty (30) calendar days following the date the Required Stockholder Approval is received, an amendment or supplement to the initial Resale Shelf Registration Statement or a new resale shelf registration statement covering those Registrable Securities that were not registered for resale on the initial Shelf Registration Statement (the "Additional Resale Shelf Registration Statement" and, together with the Resale Shelf Registration Statement, the "Resale Shelf Registration Statements"). If the Additional Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Additional Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but in any event prior to the Effectiveness Deadline.

(c) Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statements to be continuously effective and usable until such time as there are no longer any Registrable Securities or at such time as all of the Registrable Securities are Freely Tradeable (the "Effectiveness Period").

(d) If any Shelf Registration ceases to be effective under the 1933 Act for any reason at any time during the Effectiveness Period, the Company shall use its reasonable best efforts to promptly cause such Shelf Registration to again become effective under the 1933 Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall, promptly amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or file an additional registration statement (a "Subsequent Shelf Registration Statement," and such registration, a "Subsequent Shelf Registration") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the 1933 Act registering the resale from time to time by the Investors of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (i) cause such Subsequent Shelf Registration to become effective under the 1933 Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (ii) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such registration statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Investors in accordance with any reasonable method of distribution elected by the Investors.

(e) The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the 1933 Act or as reasonably requested by the Investors covered by such Shelf Registration.

(f) If a Person becomes an Investor of Registrable Securities after a Shelf Registration becomes effective under the 1933 Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming an Investor and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration:

(i) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Investor is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Investor to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(ii) if, pursuant to Section 2(f)(i), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the 1933 Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 2(f)(i) to be filed; and

(iii) notify such Investor as promptly as is reasonably practicable after the effectiveness under the 1933 Act of any post-effective amendment filed pursuant to Section 2(f)(i).

3. Underwritten Offering.

(a) If the Electing Investors intend to distribute the Registrable Securities by means of an underwriting (the "Underwritten Offering"), the Electing Investors shall, after the Resale Shelf Registration Statement becomes effective, so advise the Company by delivering a written notice to the Company (the "Underwritten Offering Notice") specifying some or all of the Registrable Securities to be subject to the Underwritten Offering; provided, however, the Investors may not, without the Company's prior written consent, launch more than one (1) Underwritten Offering within any three hundred sixty-five (365) day period. The Electing Investors shall have the right to appoint the book-running, managing and other underwriter(s) in consultation with the Company.

(b) The Company shall not include in any Underwritten Offering pursuant to this Section 3 any securities that are not Registrable Securities without the prior written consent of the Investors. If the managing underwriter or underwriters advise the Company and the Investors in writing that, in its or their good faith opinion, the total number of Registrable Securities requested to be so included (and, if permitted hereunder, other securities requested to be included in such offering), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included, then there shall be included in such Underwritten Offering the number or dollar amount of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) shall be allocated for inclusion as follows: (i) first, the Registrable Securities of the Investors that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Investors on the basis of the percentage of the Registrable Securities requested to be included in such offering by such Investors; and (ii) second, and only if all the securities referred to in clause (i) have been included, any other securities of the Company that have been requested to be so included.

4. Suspension. Notwithstanding anything to the contrary in this Agreement, upon notice to the Investors, the Company may delay, on one (1) occasion in any one hundred eighty (180) day period, the Filing Deadline and/or the Effectiveness Deadline with respect to, or suspend the effectiveness or availability of any registration statement for up to sixty (60) days in the aggregate in any twelve (12)-month period (a "Suspension Period") if the Board determines in good faith that there is a valid business purpose for suspension of such registration statement; provided that (a) any suspension of a registration statement pursuant to Section 9 shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under this Section 4, (b) the Company shall be actively employing in good faith all reasonable best efforts to launch a registered offering pursuant to this Agreement through such Suspension Period and (c) the Investors are afforded the opportunity to include the Registrable Securities in a registered offering in accordance with Section 6. The Company shall deliver to the Investors a certificate signed by an executive officer certifying that such Suspension Period is for a valid business purpose determined by the Board in good faith and such certificate shall contain a statement of the reasons for such Suspension Period and an approximation of the anticipated length of such Suspension Period (provided such notice shall not contain material, non-public information about the Company). If the Company defers any registration of Registrable Securities pursuant to Section 2 or in response to an Underwritten Offering Notice or requires the Investors to suspend any Underwritten Offering, the Investors shall be entitled to withdraw such demand for registration or Underwritten Offering Notice, as applicable, and if it does so, such request shall not be treated for any purpose as the delivery of an Underwritten Offering Notice pursuant to Section 3. The parties hereto agree and acknowledge that (i) none of the Investors or any of their respective Affiliates or transferees shall be restricted from trading or otherwise transferring any of the Registrable Securities with respect to which a registration statement is effective and (ii) nothing in any existing agreements or any other arrangements involving the Company and any of the Investors or any of their respective Affiliates (contractual or otherwise) shall be construed as limiting any of the Investors' or any of their respective Affiliates' or transferees' ability to trade or otherwise transfer any of the Registrable Securities with respect to which a registration statement is effective.

5. Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if an Investor delivers a notice to the Company (a "Take-Down Notice") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement that requires an amendment or supplement to the Shelf Registration Statement (a "Shelf Offering") and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall amend or supplement the Shelf Registration Statement as may be necessary, subject to the other applicable provisions of this Agreement, in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

6. Piggyback Registration.

(a) Subject to the terms and conditions of this Agreement, if at any time the Company files a registration statement under the 1933 Act with respect to an offering of Common Stock or other equity securities of the Company (such Common Stock and other equity securities collectively, "Other Securities"), including, for the avoidance of doubt, any registration statement filed in response to TRowe's demand for a Underwritten Offering pursuant to Section 3 of the TRowe Registration Rights Agreement ("TRowe Demand Registration"), and whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms, (ii) the Form S-3 registration statement to be filed pursuant to the Prism Merger Agreement or (iii) filed solely in connection with any employee benefit or dividend reinvestment plan), then the Company shall promptly give written notice of such filing to the Investors, which notice shall be given, to the extent reasonably practicable, no later than ten (10) Business Days before the anticipated filing or launch date (except in the case of an offering that is an "overnight offering," in which case such notice must be given no later than one (1) Business Day prior to the filing or launch date) (the "Piggyback Notice"). The Piggyback Notice and the contents thereof shall be kept confidential by the Investors and their respective Affiliates and representatives, and the Investors shall be responsible for breaches of confidentiality by their respective Affiliates and representatives in their capacity as such. The Piggyback Notice shall offer each Investor the opportunity to include in such registration statement, subject to the terms and conditions of this Agreement, the number of Registrable Securities as such Investor may reasonably request (a "Piggyback Registration"). Subject to the terms and conditions of this Agreement, the Company shall include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received from an Electing Investor a written request for inclusion therein within five (5) Business Days following receipt of any Piggyback Notice by such Electing Investor (but in any event not later than one (1) Business Day prior to the filing date of a Piggyback Registration and, except in the case of an offering that is an "overnight offering," not later than one (1) Business Day following receipt of such notice), which request shall specify the maximum number of Registrable Securities intended to be disposed of by such Electing Investor and the intended method of distribution. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Company may not commence or permit the commencement of any sale of Other Securities in a public offering to which this Section 6 applies unless the Electing Investors shall have received the Piggyback Notice in respect to such public offering not less than ten (10) Business Days prior to the commencement of such sale of Other Securities (except in the case of an offering that is an "overnight offering," in which case such notice must be given no later than one (1) Business Day prior to the filing or launch date). Except in the case of an offering that is an "overnight offering," the Electing Investors shall be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time at least two (2) Business Days prior to the effective date of the registration statement relating to such Piggyback Registration.

(b) If any Other Securities are to be sold in an underwritten offering, (i) the Company or other Persons designated by the Company shall have the right to appoint the book-running, managing and other underwriter(s) for such offering in their discretion and (ii) to the extent such Other Securities are of the same class as the Registrable Securities, the Electing Investors shall be permitted to include all Registrable Securities requested to be included in such registration in such underwritten offering on the same terms and conditions as such Other Securities proposed by the Company or any third party to be included in such offering; provided, however, that if such offering involves an underwritten offering and the managing underwriter(s) of such underwritten offering advise the Company in writing that it is their good faith opinion that the total amount of Registrable Securities requested to be so included, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering (an "Underwriter Cutback"), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (A) first, all Other Securities being sold by the Company for its own account; (B) second, and only if all the securities referred to in clause (A) have been included, all Registrable Securities requested to be included in such registration by the Electing Investors, *pro rata*, based on the number of Registrable Securities beneficially owned by such Electing Investors; and (C) third, and only if all the securities referred to in clause (B) have been included, all Other Securities of any holders thereof (other than the Company and the Electing Investors) requesting inclusion in such registration, *pro rata*, based on the number of Other Securities beneficially owned by each such holder of Other Securities; provided, however that in the event of a Piggyback Registration in connection with a TRowe Demand Registration, such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (w) first, all Registrable Securities requested to be included in such registration by TRowe; (x) second, and only if all the securities referred to in clause (w) have been included, all Registrable Securities requested to be included in such registration by the Electing Investor; (y) third, and only if all the securities referred to in clause (x) have been included, Other Securities being sold by the Company for its own account; and (z) fourth, and only if all the securities referred to in clause (y) have been included, all Other Securities of any holders thereof (other than the Electing Investors and the Company) requesting inclusion in such registration, *pro rata*, based on the number of Other Securities beneficially owned by each such holder of Other Securities.

7. Expenses of Registration. Except as specifically provided for in this Agreement, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registration hereunder shall be borne by the Electing Investors in proportion to the number of Registrable Securities for which registration was requested.

8. Obligations of the Company. Whenever required to effect the registration of any Registrable Securities pursuant to Sections 2, 3 or 6 of this Agreement, the Company shall, as promptly as reasonably practicable:

(a) Prepare and file with the Commission a registration statement (including all required exhibits to such registration statement) with respect to such Registrable Securities and use reasonable best efforts to cause such registration statement to become effective, or prepare and file with the Commission a prospectus supplement with respect to such Registrable Securities pursuant to an effective registration statement and keep such registration statement effective or such prospectus supplement current, in each case for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;

(b) Prepare and file with the Commission such amendments, including post-effective amendments, and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the 1933 Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) To the extent reasonably practicable, not less than five (5) Business Days prior to the filing of a registration statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Electing Investors and to their legal counsel copies of all such documents proposed to be filed and give reasonable consideration to the inclusion in such documents of any comments reasonably and timely made by the Electing Investors or their legal counsel; provided that the Company shall include in such documents any such comments that are necessary to correct any material misstatement or omission regarding an Electing Investor;

(d) Furnish to the Electing Investors and to their legal counsel such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits but not documents incorporated by reference) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the 1933 Act, and such other documents as the Electing Investors may reasonably request in order to facilitate the disposition of Registrable Securities owned by the Electing Investors. The Company hereby consents to the use of such prospectus and each amendment or supplement thereto by each of the Electing Investors in accordance with applicable laws and regulations in connection with the offering and sale of the Registrable Securities covered by such prospectus and any amendment or supplement thereto;

(e) Use its reasonable best efforts to register and qualify the Registrable Securities covered by a registration statement contemplated by this Agreement under blue sky or such other securities laws of such jurisdictions as shall be reasonably requested by the Electing Investors and to keep such registration or qualification in effect for so long as such registration statement remains in effect; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(f) Make available for inspection by the Electing Investors, any underwriter(s) participating in a disposition of Registrable Securities and any counsel or accountants retained by the Electing Investors or underwriter(s), all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries as is reasonable and customary, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions, in each case reasonably requested by any such representative, underwriter(s), counsel or accountant in connection with a customary due diligence review; provided that (i) any party receiving confidential materials shall execute a confidentiality agreement on customary terms if reasonably requested by the Company and (ii) the Company may in its reasonable discretion restrict access to competitively sensitive or legally privileged documents or information;

(g) Enter into customary agreements and take such other actions as are reasonably required in order to facilitate the disposition of Registrable Securities, including, if the method of distribution of Registrable Securities is by means of an underwritten offering, using commercially reasonable efforts to (i) cause the chief executive officer and chief financial officer to be available at reasonable dates and times to participate in "road show" presentations and/or investor conference calls to market the Registrable Securities during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company; provided that the aggregate number of days of "road show" presentations in connection with an underwritten offering of Registrable Securities for each registration pursuant to a demand made under Section 3 shall not exceed three (3) Business Days; and (ii) negotiate and execute an underwriting agreement in customary form with the managing underwriter(s) of such offering and such other documents reasonably required under the terms of such underwriting arrangements, including using reasonable best efforts to procure a customary legal opinion and customary auditor comfort letters. The Electing Investors shall also enter into and perform their obligations under such underwriting agreement;

(h) If such securities are being sold through underwriters, use reasonable best efforts to (i) furnish, on the date that such Registrable Securities are delivered to the underwriters, an opinion, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and a "negative assurance letter," dated as of such date, of the legal counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters and (ii) furnish, on the date of the underwriting agreement and on the date that the Registrable Securities are delivered to the underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(i) Use reasonable best efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(j) Give notice to the Electing Investors as promptly as reasonably practicable:

(i) when any registration statement filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or any amendment to such registration statement has been filed with the Commission and when such registration statement or any post-effective amendment to such registration statement has become effective;

(ii) when the prospectus or any prospectus supplement has been filed and, with respect to such registration statement, when the same has become effective;

(iii) of any request by the Commission or other federal or state governmental authority for additional information regarding, or amendments or supplements to, any registration statement (or any information incorporated by reference in, or exhibits to, such registration statement) filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or the prospectus (including information incorporated by reference in such prospectus) included in such registration statement;

(iv) of the issuance by the Commission of any stop order suspending the effectiveness of any registration statement filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or the initiation of any proceedings for that purpose;

(v) if at any time the Company has reason to believe that the representations and warranties of the Company or any of its subsidiaries contained in any agreement (including any underwriting agreement contemplated by Section 8(g) above) relating to the disposition of Registrable Securities cease to be true and correct;

(vi) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(vii) at any time when a prospectus relating to any such registration statement is required to be delivered under the 1933 Act, of the happening of any event as a result of which such prospectus (including any material incorporated by reference or deemed to be incorporated by reference in such prospectus), as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, which event requires the Company to make changes in such effective registration statement and prospectus in order to make the statements therein or incorporated by reference therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made and shall not contain any material, non-public information about the Company);

(k) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 8(j)(iv) at the earliest practicable time;

(l) Cooperate with the Electing Investors and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(m) Upon the occurrence of any event contemplated by Section 8(j)(vii), reasonably promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Electing Investors, the prospectus will not contain (or incorporate by reference) an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Electing Investors in accordance with Section 8(j)(vii) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Electing Investors shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in the Electing Investors' possession, and the period of effectiveness of such registration statement provided for in Section 8(a) above shall be extended by the number of days from and including the date of the giving of such notice to the date the Electing Investors shall have received such amended or supplemented prospectus pursuant to this Section 8(m); and

(n) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including, if applicable, the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Electing Investors or the managing underwriter(s). In connection therewith, if reasonably required by the Company's transfer agent, the Company shall, promptly after the effectiveness of the registration statement, cause an opinion of counsel as to the effectiveness of the registration statement to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the registration statement.

9. Suspension of Sales. Upon receipt of written notice from the Company pursuant to Section 8(j)(vii), the Electing Investors shall immediately discontinue disposition of Registrable Securities until they (i) have received copies of a supplemented or amended prospectus or prospectus supplement pursuant to Section 8(m) or (ii) are advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Electing Investors shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Electing Investors' possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

10. Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not enter into any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities that conflict with the rights granted to the Investors herein without the prior written consent of the Investors holding a majority of the Registrable Securities. It is agreed that the granting of *pro rata* registration rights to any other investor in the Company shall not be considered to conflict with the rights granted to the Investors herein.

11. Free Writing Prospectuses. The Electing Investors shall not use any free writing prospectus (as defined in Rule 405 under the 1933 Act) in connection with the sale of Registrable Securities without the prior written consent of the Company; provided that the Electing Investors may use any free writing prospectus prepared and distributed by the Company.

12. Indemnification.

(a) Notwithstanding any termination of this Agreement, the Company shall indemnify and hold harmless each of the Electing Investors and each of their respective current and former officers, directors, employees, agents, partners, members, stockholders, representatives and Affiliates, and each Person or entity, if any, that controls the Electing Investors within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and the officers, directors, employees, agents and employees of each such controlling Person, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the 1933 Act (each, an "Investor Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), joint or several, arising out of or based upon any untrue or alleged untrue statement of material fact contained or incorporated by reference in any registration statement, prospectus, preliminary prospectus or final prospectus contained therein, offering circular or other document, or any amendment or supplement thereto, or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto; any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or any violation by the Company of any rule or regulation promulgated under the 1933 Act, the 1934 Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Investor Indemnitees for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred; provided that the Company shall not be liable to such Investor Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein, offering circular or other document, or any such amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto, in reliance upon and in conformity with information regarding such Investor Indemnitee or its plan of distribution or ownership interests which such Investor Indemnitee furnished in writing to the Company for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein, offering circular or other document, or any such amendments or supplements thereto, (ii) offers or sales effected by or on behalf of such Investor Indemnitee "by means of" (as defined in Rule 159A under the 1933 Act) a "free writing prospectus" (as defined in Rule 405 under the 1933 Act) that was not authorized in writing by the Company, or (iii) the failure to deliver or make available to a purchaser of Registrable Securities a copy of any preliminary prospectus, pricing information or final prospectus contained in the applicable registration statement or any amendments or supplements thereto (to the extent the same is required by applicable law to be delivered or made available to such purchaser at the time of sale of contract); provided that the Company shall have delivered to each Electing Investor such preliminary prospectus or final prospectus contained in the applicable registration statement and any amendments or supplements thereto pursuant to Section 8(d) no later than the time of contract of sale in accordance with Rule 159 under the 1933 Act.

(b) Each Electing Investor shall, severally and not jointly, indemnify and hold harmless the Company and its officers, directors, employees, agents, representatives and Affiliates, each underwriter, if any, of the Company's securities covered by such a registration, each Person who controls the Company or such underwriter within the meaning of Section 15 of the 1933 Act, and each other Electing Investor and each of such other Electing Investor's officers, directors, partners and members and each Person controlling such other Electing Investor within the meaning of Section 15 of the 1933 Act, against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals) arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto, or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only to the extent that such untrue statements or omissions are based solely upon information regarding such Electing Investor furnished in writing to the Company by such Electing Investor expressly for use therein. In no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds received by such Electing Investor upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) If any proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party") with respect to a claim for which indemnity is required under this Agreement, such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense in such proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with such defense; provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Section 12, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense of such proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (i) the Indemnifying Party has agreed in writing to pay such fees and expenses; (ii) the Indemnifying Party shall have failed promptly to assume the defense of such proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such proceeding; or (iii) the named parties to any such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that representation of both such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate because of an actual conflict of interest between the Indemnifying Party and such Indemnified Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to, but only to the extent necessary, one local counsel) at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding. All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section 12) shall be paid to the Indemnified Party, as incurred, promptly upon receipt of written notice thereof by the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification under this Section 12).

(d) If the indemnification provided for in Sections 12(a) or 12(b) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to in Sections 12(a) or 12(b), as the case may be, or is insufficient to hold the Indemnified Party harmless as contemplated therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, actions, liabilities, costs or expenses, in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements, omissions or violations which resulted in such losses, claims, damages, actions, liabilities, costs or expenses, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, shall be determined by reference to, among other factors, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Investors agree that it would not be just and equitable if contribution pursuant to this Section 12(d) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 12(d). Notwithstanding the foregoing, in no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds received by such Electing Investor upon the sale of the Registrable Securities giving rise to such contribution obligation. No Indemnified Party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from an Indemnifying Party not guilty of such fraudulent misrepresentation.

13. Agreement to Furnish Information. If requested by the Company or the book-running managing underwriter(s) in an underwritten offering of Common Stock (or other securities of the Company convertible into Common Stock), each Electing Investor shall provide such information regarding itself and its Registrable Securities as may be reasonably required by the Company or such representative of the book-running managing underwriter(s) in connection with the filing of a registration statement and the completion of any public offering of the Registrable Securities pursuant to this Agreement.

14. Rule 144 Reporting. With a view to making available to the Investors the benefits of certain rules and regulations of the Commission which may permit the sale of the Registrable Securities that are Common Stock to the public without registration, the Company agrees to use its reasonable best efforts to: (a) make and keep public information available, as those terms are understood and defined in Rule 144 under the 1933 Act or any similar or analogous rule promulgated under the 1933 Act, at all times after the effective date of this Agreement ("Rule 144"); (b) file with the Commission, in a timely manner, all reports and other documents required of the Company under the 1934 Act; and (c) so long as the Investors own any Registrable Securities, furnish to such Investors forthwith upon request: (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the 1934 Act; and (ii) unless otherwise available at no charge by access electronically to the Commission's EDGAR filing system (or any successor system), a copy of the most recent annual or quarterly report of the Company and such other reports and documents as such Investors may reasonably request in availing themselves of any rule or regulation of the Commission allowing them to sell any such Common Stock without registration.

15. Miscellaneous.

(a) Termination of Registration Rights. The registration rights of any particular Investor granted under this Agreement shall terminate with respect to such Investor upon the date upon which neither the Investor nor any of its Affiliates holds any Registrable Securities.

(b) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed in all respects by the internal laws of the State of New York without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

(c) Jurisdiction; Jury Trial. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 15(h) and as permitted by applicable law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN.

(d) Specific Performance. Each of the Investors, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other party hereto would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that the Investors, on the one hand, and the Company, on the other hand (the "Moving Party"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 15(d) is not the exclusive remedy for any violation of this Agreement.

(e) Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, heirs and permitted assigns (including, for the avoidance of doubt, any of the Investors' Affiliates) of the parties; provided, however, that in the event that any Person acquires or becomes a transferee or assignee of any Registrable Securities, such Person shall, without any further writing or action of any kind, be deemed a beneficiary hereof for all purposes and such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be treated as an "Investor" for all purposes under this Agreement and shall be entitled to receive the benefits of, and be conclusively deemed to have agreed to be bound by all of the applicable terms and provisions of, this Agreement.

(f) No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, this Agreement is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person; provided, however, that each Indemnified Party (but only, in the case of an Investor Indemnitee, if such Investor Indemnitee has complied with the requirements of Section 12(c), including the first proviso of Section 12(c)) shall be entitled to the rights, remedies and obligations provided to an Indemnified Party under Section 12, and each such Indemnified Party shall have standing as a third-party beneficiary under Section 12 to enforce such rights, remedies and obligations.

(g) Entire Agreement. This Agreement and the other Transaction Documents supersede all other prior or contemporaneous agreements and understandings, both written and oral, between the Investors, the Company, their Affiliates and Persons acting on their behalf with respect to the subject matter hereof and thereof, and this Agreement, the other Transaction Documents, and the instruments referenced herein and therein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to any such matters.

(h) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail; or (iii) one Business Day after deposit with an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier), in each case properly addressed to the party to receive the same; provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one Business Day after e-mail by dispatch pursuant to one of the methods described in the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Cathy King
E-mail: cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to the Investors:

PAR Act III, LLC
23 Prescott St.
Brookline, MA 02446
Attention: Ron Shaich
E-mail: ronshaich@act3holdings.com

with a copy to (for informational purposes only):

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matt B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

or to such other address and/or e-mail address and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, and recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service, receipt by facsimile or e-mail or receipt from an overnight courier service in accordance with clause (i) or (ii) above, respectively.

(i) Delays or Omissions. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and not exclusive of any other remedies provided by law.

(j) Expenses. The Company and the Investors shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 7.

(k) Amendments and Waivers. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the holders of at least a majority of the Registrable Securities then outstanding or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this Section 15(k) shall be binding upon each holder of any Registrable Securities at the time outstanding (including securities convertible into Registrable Securities), each future holder of all such Registrable Securities and the Company. No such amendment shall be effective to the extent that it applies to less than all of the Investors or holders of Registrable Securities.

(l) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf format signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(m) Severability. If any provision of this Agreement is prohibited by law or otherwise becomes or is declared by a court of competent jurisdiction to be invalid or unenforceable, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties hereto will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(n) Headings; Interpretation. The headings used in this Agreement are used for convenience of reference only and are not to be considered part of, or affect the interpretation of, this Agreement. When a reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules) and not to any particular provision of this Agreement. Unless otherwise specified in this Agreement, the term "dollars" and the symbol "$" mean U.S. dollars for purposes of this Agreement and all amounts in this Agreement shall be paid in U.S. dollars. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Agreement means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the 1933 Act or 1934 Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff "no-action," interpretive and exemptive letters, and staff compliance and disclosure interpretations (including "telephone interpretations") of such section or rule by the Commission. Each of the parties hereto has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it were drafted by each of the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

(o) Further Assurances. Each party hereto shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh
Name: Savneet Singh
Title: President and Chief Executive Officer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PAR ACT III, LLC

By: /s/ Ronald M. Shaich
Name: Ronald M. Shaich
Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

SCHEDULE 1

SCHEDULE OF INVESTORS

PAR Act III, LLC, a Delaware limited liability company

Exhibit 10.5

Execution Version

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of April 8, 2021, is made and entered into by and among PAR Technology Corporation, a Delaware corporation (the "Company"), and the investors listed on the Schedule of Investors attached hereto as Schedule 1 (each, an "Investor" and collectively, the "Investors").

WHEREAS, pursuant to the Securities Purchase Agreement by and among the Company and each of the Investors, dated as of April 8, 2021 (the "Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Purchase Agreement, to issue and sell, at the Closing, to the Investors an aggregate of 2,279,412 shares of the Company's common stock, par value $0.02 per share (the "Common Stock");

WHEREAS, in accordance with the terms of the Purchase Agreement, the Company has agreed to provide Investors certain registration rights under the Securities Act of 1933 (the "1933 Act"), and the rules and regulations thereunder, and applicable state securities laws.

NOW, THEREFORE, in consideration of the foregoing and the agreements contained in this Agreement, and intending to be legally bound by this Agreement, the Company and the Investors agree as follows:

1. Definitions. Capitalized terms used and not otherwise defined in this Agreement that are defined in the Purchase Agreement shall have the respective meanings ascribed to such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"1933 Act" shall have the meaning set forth in the recitals of this Agreement.

"1934 Act" means the Securities Exchange Act of 1934 and the rules and regulations of the Commission thereunder.

"Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Automatic Shelf Registration Statement" means an "automatic shelf registration statement" as defined in Rule 405 under the 1933 Act.

"Business Day" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" shall have the meaning set forth in the recitals of this Agreement.

"Company" shall have the meaning set forth in the recitals of this Agreement.

"Effectiveness Deadline" means, with respect to any registration statement required to be filed to cover the resale by the Investors of the Registrable Securities pursuant to Section 2, (a) the date such registration statement is filed, if the Company is a WKSI as of such date and such registration statement is an Automatic Shelf Registration Statement eligible to become immediately effective upon filing pursuant to Rule 462 under the 1933 Act; or (b) if the Company is not a WKSI as of the date such registration statement is filed, the one hundred and twentieth (120th) day after the date of this Agreement. If applicable, the Effectiveness Deadline with respect to the Prospectus Supplement shall be the date the Prospectus Supplement is filed.

"Effectiveness Period" shall have the meaning set forth in Section 2(c).

"Electing Investors" means, with respect to a registration, each of the Investors that has Registrable Securities directly owned by such Investor included in such registration in accordance with Sections 2 or 6, as the case may be, as communicated in writing to the Company in accordance with Sections 2(a) or 6(a), as applicable.

"Existing Shelf Registration Statement" means the Company's Registration Statement on Form S-3 (File No. 333-249142), which became effective on September 30, 2020.

"Filing Deadline" means, with respect to the Prospectus Supplement or any registration statement required to be filed to cover the resale by Investors of Registrable Securities pursuant to Section 2, thirty (30) calendar days following the date of this Agreement; provided that, to the extent that the Company has not been provided the information regarding the Investors and their Registrable Securities in accordance with Section 13 at least two (2) Business Days prior to the Filing Deadline, then the such Filing Deadline shall be extended to the second (2nd) Business Day following the date on which such information is provided to the Company.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"Freely Tradeable" means, with respect to any security, a security that is eligible to be sold by the holder thereof without any volume or manner of sale restrictions pursuant to Rule 144.

"Indemnified Party" shall have the meaning set forth in Section 12(c).

"Indemnifying Party" shall have the meaning set forth in Section 12(c).

"Investor Indemnitee" shall have the meaning set forth in Section 12(a).

"Investors" shall have the meaning set forth in the preamble of this Agreement.

"Moving Party" shall have the meaning set forth in Section 15(d).

"Other Securities" shall have the meaning set forth in Section 6(a).

"PAR Act" means PAR Act III, LLC.

"PAR Act Demand Registration" shall have the meaning set forth in Section 6(a).

"PAR Act Registration Rights Agreement" shall mean the Registration Rights Agreement between the Company and PAR Act, dated as of the date hereof.

"Piggyback Notice" shall have the meaning set forth in Section 6(a).

"Piggyback Registration" shall have the meaning set forth in Section 6(a).

"prospectus" means the prospectus included in a registration statement (including a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the 1933 Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a registration statement, and all other amendments and supplements to the prospectus, including post-effective amendments.

"Prospectus Supplement" means a prospectus supplement to the Existing Shelf Registration Statement that registers the resale of the Registrable Securities hereunder.

"Purchase Agreement" shall have the meaning set forth in the recitals of this Agreement.

"register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement with the Commission in compliance with the 1933 Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement by the Commission.

"Registrable Securities" means, as of any date of determination, (a) any Common Stock issued to the Investors pursuant to the Purchase Agreement (whether or not subsequently transferred to any other Person), and (b) any securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend, stock split, recapitalization or other distribution with respect to, or in exchange for, or in replacement of, the securities referenced in clause (a) above; provided that the term "Registrable Securities" shall exclude in all cases any securities that are sold pursuant to an effective registration statement under the 1933 Act or in compliance with Rule 144.

"Registration Expenses" means, with respect to any registration: (a) all expenses incurred by the Company in effecting any registration pursuant to this Agreement, including all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses; (b) all reasonable fees and expenses related to any registration of Registrable Securities by the Electing Investors (including the fees and disbursements of one legal counsel (and only one legal counsel) to the Electing Investors); and (c) all expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration; provided that Registration Expenses shall not include any Selling Expenses.

"registration statement" means any registration statement that is required to register the resale of the Registrable Securities under this Agreement, including the related prospectus and any pre- and post-effective amendments and supplements to each such registration statement or prospectus.

"Resale Shelf Registration" shall have the meaning set forth in Section 2(a).

"Resale Shelf Registration Statement" shall have the meaning set forth in Section 2(a).

"Rule 144" shall have the meaning set forth in Section 14.

"Selling Expenses" means all underwriting discounts, selling commissions and stock transfer taxes, if any, applicable to the sale of Registrable Securities by the Electing Investors and all related fees and expenses of any counsel to the Electing Investors (other than such fees and expenses included in Registration Expenses).

"Shelf Offering" shall have the meaning set forth in Section 5.

"Shelf Registration" means the Resale Shelf Registration (as defined in Section 2(a)) or a Subsequent Shelf Registration (as defined in Section 2(d)), as applicable.

"Shelf Registration Statement" means the Resale Shelf Registration Statement or a Subsequent Shelf Registration Statement, as applicable.

"Subsequent Shelf Registration" shall have the meaning set forth in Section 2(d).

"Subsequent Shelf Registration Statement" shall have the meaning set forth in Section 2(d).

"Suspension Period" shall have the meaning set forth in Section 4.

"Take-Down Notice" shall have the meaning set forth in Section 5.

"Underwriter Cutback" shall have the meaning set forth in Section 6(b).

"Underwritten Offering" shall have the meaning set forth in Section 3(a).

"Underwritten Offering Notice" shall have the meaning set forth in Section 3(a).

"WKSI" means a "well known seasoned issuer" as defined in Rule 405 under the 1933 Act.

2. Registration.

(a) Subject to the terms and conditions of this Agreement and to the extent permitted by applicable law, the Company shall file, as promptly as reasonably practicable, but no later than the Filing Deadline, (i) the Prospectus Supplement, if the Company determines that registration through a Prospectus Supplement is appropriate in light of the Company's status as a WKSI, or (ii) a registration statement under the 1933 Act covering the sale or distribution from time to time by the Investors, on a delayed or continuous basis pursuant to Rule 415 of the 1933 Act of all the Registrable Securities and shall provide for the registration of such Registrable Securities for resale by such Investors in accordance with any reasonable method of distribution elected by the Investors (such registration, a "Resale Shelf Registration"). The registration statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form for such purposes) (the "Resale Shelf Registration Statement"), and if the Company is a WKSI as of the filing date and determines not to file a Prospectus Supplement as provided in (a)(i) above, the Resale Shelf Registration Statement shall be an Automatic Shelf Registration Statement. If the Resale Shelf Registration Statement is not an Automatic Shelf Registration Statement, then the Company shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the Commission as promptly as practicable after the filing thereof, but in any event prior to the Effectiveness Deadline.

(b) [Intentionally left blank.]

(c) Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities or at such time as all of the Registrable Securities are Freely Tradeable (the "Effectiveness Period").

(d) If any Shelf Registration ceases to be effective under the 1933 Act for any reason at any time during the Effectiveness Period, the Company shall use its reasonable best efforts to promptly cause such Shelf Registration to again become effective under the 1933 Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration), and in any event shall, promptly amend such Shelf Registration in a manner reasonably expected to obtain the withdrawal of any order suspending the effectiveness of such Shelf Registration or file an additional registration statement (a "Subsequent Shelf Registration Statement," and such registration, a "Subsequent Shelf Registration") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the 1933 Act registering the resale from time to time by the Investors of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration is filed, the Company shall use its reasonable best efforts to (i) cause such Subsequent Shelf Registration to become effective under the 1933 Act as promptly as is reasonably practicable after such filing, but in no event later than the date that is ninety (90) days after such Subsequent Shelf Registration is filed and (ii) keep such Subsequent Shelf Registration (or another Subsequent Shelf Registration) continuously effective until the end of the Effectiveness Period. Any such Subsequent Shelf Registration shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form, and if the Company is a WKSI as of the filing date, such registration statement shall be an Automatic Shelf Registration Statement. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form and shall provide for the registration of such Registrable Securities for resale by such Investors in accordance with any reasonable method of distribution elected by the Investors.

(e) The Company shall supplement and amend any Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration if required by the 1933 Act or as reasonably requested by the Investors covered by such Shelf Registration.

(f) If a Person becomes an Investor of Registrable Securities after a Shelf Registration becomes effective under the 1933 Act, the Company shall, as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming an Investor and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration:

(i) if required and permitted by applicable law, file with the Commission a supplement to the related prospectus or a post-effective amendment to the Shelf Registration so that such Investor is named as a selling securityholder in the Shelf Registration and the related prospectus in such a manner as to permit such Investor to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(ii) if, pursuant to Section 2(f)(i), the Company shall have filed a post-effective amendment to the Shelf Registration that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the 1933 Act as promptly as is reasonably practicable, but in any event by the date that is ninety (90) days after the date such post-effective amendment is required by Section 2(f)(i) to be filed; and

(iii) notify such Investor as promptly as is reasonably practicable after the effectiveness under the 1933 Act of any post-effective amendment filed pursuant to Section 2(f)(i).

3. Underwritten Offering.

(a) If the Electing Investors intend to distribute the Registrable Securities by means of an underwriting (the "Underwritten Offering"), the Electing Investors shall, after the Resale Shelf Registration Statement becomes effective, so advise the Company by delivering a written notice to the Company (the "Underwritten Offering Notice") specifying some or all of the Registrable Securities to be subject to the Underwritten Offering; provided, however, the Investors may not, without the Company's prior written consent, launch more than one (1) Underwritten Offering within any three hundred sixty-five (365) day period. The Electing Investors shall have the right to appoint the book-running, managing and other underwriter(s) in consultation with the Company.

(b) The Company shall not include in any Underwritten Offering pursuant to this Section 3 any securities that are not Registrable Securities without the prior written consent of the Investors. If the managing underwriter or underwriters advise the Company and the Investors in writing that, in its or their good faith opinion, the total number of Registrable Securities requested to be so included (and, if permitted hereunder, other securities requested to be included in such offering), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included, then there shall be included in such Underwritten Offering the number or dollar amount of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) shall be allocated for inclusion as follows: (i) first, the Registrable Securities of the Investors that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Investors on the basis of the percentage of the Registrable Securities requested to be included in such offering by such Investors; and (ii) second, and only if all the securities referred to in clause (i) have been included, any other securities of the Company that have been requested to be so included.

4. Suspension. Notwithstanding anything to the contrary in this Agreement, upon notice to the Investors, the Company may delay, on one (1) occasion in any one hundred eighty (180) day period, the Filing Deadline and/or the Effectiveness Deadline with respect to, or suspend the effectiveness or availability of any registration statement for up to sixty (60) days in the aggregate in any twelve (12)-month period (a "Suspension Period") if the Board determines in good faith that there is a valid business purpose for suspension of such registration statement; provided that (a) any suspension of a registration statement pursuant to Section 9 shall be treated as a Suspension Period for purposes of calculating the maximum number of days of any Suspension Period under this Section 4, (b) the Company shall be actively employing in good faith all reasonable best efforts to launch a registered offering pursuant to this Agreement through such Suspension Period and (c) the Investors are afforded the opportunity to include the Registrable Securities in a registered offering in accordance with Section 6. The Company shall deliver to the Investors a certificate signed by an executive officer certifying that such Suspension Period is for a valid business purpose determined by the Board in good faith and such certificate shall contain a statement of the reasons for such Suspension Period and an approximation of the anticipated length of such Suspension Period (provided such notice shall not contain material, non-public information about the Company). If the Company defers any registration of Registrable Securities pursuant to Section 2 or in response to an Underwritten Offering Notice or requires the Investors to suspend any Underwritten Offering, the Investors shall be entitled to withdraw such demand for registration or Underwritten Offering Notice, as applicable, and if it does so, such request shall not be treated for any purpose as the delivery of an Underwritten Offering Notice pursuant to Section 3. The parties hereto agree and acknowledge that (i) none of the Investors or any of their respective Affiliates or transferees shall be restricted from trading or otherwise transferring any of the Registrable Securities with respect to which a registration statement is effective and (ii) nothing in any existing agreements or any other arrangements involving the Company and any of the Investors or any of their respective Affiliates (contractual or otherwise) shall be construed as limiting any of the Investors' or any of their respective Affiliates' or transferees' ability to trade or otherwise transfer any of the Registrable Securities with respect to which a registration statement is effective.

5. Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if an Investor delivers a notice to the Company (a "Take-Down Notice") stating that it intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement that requires an amendment or supplement to the Shelf Registration Statement (a "Shelf Offering") and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall amend or supplement the Shelf Registration Statement as may be necessary, subject to the other applicable provisions of this Agreement, in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering.

6. Piggyback Registration.

(a) Subject to the terms and conditions of this Agreement, if at any time the Company files a registration statement under the 1933 Act with respect to an offering of Common Stock or other equity securities of the Company (such Common Stock and other equity securities collectively, "Other Securities"), including, for the avoidance of doubt, any registration statement filed in response to PAR Act's demand for a Underwritten Offering pursuant to Section 3 of the PAR Act Registration Rights Agreement ("PAR Act Demand Registration"), and whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms, (ii) the Form S-3 registration statement to be filed pursuant to the Prism Merger Agreement or (iii) filed solely in connection with any employee benefit or dividend reinvestment plan), then the Company shall promptly give written notice of such filing to the Investors, which notice shall be given, to the extent reasonably practicable, no later than ten (10) Business Days before the anticipated filing or launch date (except in the case of an offering that is an "overnight offering," in which case such notice must be given no later than one (1) Business Day prior to the filing or launch date) (the "Piggyback Notice"). The Piggyback Notice and the contents thereof shall be kept confidential by the Investors and their respective Affiliates and representatives, and the Investors shall be responsible for breaches of confidentiality by their respective Affiliates and representatives in their capacity as such. The Piggyback Notice shall offer each Investor the opportunity to include in such registration statement, subject to the terms and conditions of this Agreement, the number of Registrable Securities as such Investor may reasonably request (a "Piggyback Registration"). Subject to the terms and conditions of this Agreement, the Company shall include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received from an Electing Investor a written request for inclusion therein within five (5) Business Days following receipt of any Piggyback Notice by such Electing Investor (but in any event not later than one (1) Business Day prior to the filing date of a Piggyback Registration and, except in the case of an offering that is an "overnight offering," not later than one (1) Business Day following receipt of such notice), which request shall specify the maximum number of Registrable Securities intended to be disposed of by such Electing Investor and the intended method of distribution. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, the Company may not commence or permit the commencement of any sale of Other Securities in a public offering to which this Section 6 applies unless the Electing Investors shall have received the Piggyback Notice in respect to such public offering not less than ten (10) Business Days prior to the commencement of such sale of Other Securities (except in the case of an offering that is an "overnight offering," in which case such notice must be given no later than one (1) Business Day prior to the filing or launch date). Except in the case of an offering that is an "overnight offering," the Electing Investors shall be permitted to withdraw all or part of the Registrable Securities from a Piggyback Registration at any time at least two (2) Business Days prior to the effective date of the registration statement relating to such Piggyback Registration.

(b) If any Other Securities are to be sold in an underwritten offering, (i) the Company or other Persons designated by the Company shall have the right to appoint the book-running, managing and other underwriter(s) for such offering in their discretion and (ii) to the extent such Other Securities are of the same class as the Registrable Securities, the Electing Investors shall be permitted to include all Registrable Securities requested to be included in such registration in such underwritten offering on the same terms and conditions as such Other Securities proposed by the Company or any third party to be included in such offering; provided, however, that if such offering involves an underwritten offering and the managing underwriter(s) of such underwritten offering advise the Company in writing that it is their good faith opinion that the total amount of Registrable Securities requested to be so included, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering (an "Underwriter Cutback"), exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the good faith opinion of such managing underwriter(s) can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (A) first, all Other Securities being sold by the Company for its own account; (B) second, and only if all the securities referred to in clause (A) have been included, all Registrable Securities requested to be included in such registration by the Electing Investors, *pro rata*, based on the number of Registrable Securities beneficially owned by such Electing Investors; and (C) third, and only if all the securities referred to in clause (B) have been included, all Other Securities of any holders thereof (other than the Company and the Electing Investors) requesting inclusion in such registration, *pro rata*, based on the number of Other Securities beneficially owned by each such holder of Other Securities; provided, however that in the event of a Piggyback Registration in connection with a PAR Act Demand Registration, such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows: (w) first, all Registrable Securities requested to be included in such registration by PAR Act; (x) second, and only if all the securities referred to in clause (w) have been included, all Registrable Securities requested to be included in such registration by the Electing Investor; (y) third, and only if all the securities referred to in clause (x) have been included, Other Securities being sold by the Company for its own account; and (z) fourth, and only if all the securities referred to in clause (y) have been included, all Other Securities of any holders thereof (other than the Electing Investors and the Company) requesting inclusion in such registration, *pro rata*, based on the number of Other Securities beneficially owned by each such holder of Other Securities.

7. Expenses of Registration. Except as specifically provided for in this Agreement, all Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registration hereunder shall be borne by the Electing Investors in proportion to the number of Registrable Securities for which registration was requested.

8. Obligations of the Company. Whenever required to effect the registration of any Registrable Securities pursuant to Sections 2, 3 or 6 of this Agreement, the Company shall, as promptly as reasonably practicable:

(a) Prepare and file with the Commission a registration statement (including all required exhibits to such registration statement) with respect to such Registrable Securities and use reasonable best efforts to cause such registration statement to become effective, or prepare and file with the Commission a prospectus supplement with respect to such Registrable Securities pursuant to an effective registration statement and keep such registration statement effective or such prospectus supplement current, in each case for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;

(b) Prepare and file with the Commission such amendments, including post-effective amendments, and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the 1933 Act with respect to the disposition of all securities covered by such registration statement (including to permit the intended method of distribution thereof) and as may be necessary to keep the registration statement continuously effective for the period set forth in this Agreement;

(c) To the extent reasonably practicable, not less than five (5) Business Days prior to the filing of a registration statement or any related prospectus or any amendment or supplement thereto, the Company shall furnish to the Electing Investors and to their legal counsel copies of all such documents proposed to be filed and give reasonable consideration to the inclusion in such documents of any comments reasonably and timely made by the Electing Investors or their legal counsel; provided that the Company shall include in such documents any such comments that are necessary to correct any material misstatement or omission regarding an Electing Investor;

(d) Furnish to the Electing Investors and to their legal counsel such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits but not documents incorporated by reference) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the 1933 Act, and such other documents as the Electing Investors may reasonably request in order to facilitate the disposition of Registrable Securities owned by the Electing Investors. The Company hereby consents to the use of such prospectus and each amendment or supplement thereto by each of the Electing Investors in accordance with applicable laws and regulations in connection with the offering and sale of the Registrable Securities covered by such prospectus and any amendment or supplement thereto;

(e) Use its reasonable best efforts to register and qualify the Registrable Securities covered by a registration statement contemplated by this Agreement under blue sky or such other securities laws of such jurisdictions as shall be reasonably requested by the Electing Investors and to keep such registration or qualification in effect for so long as such registration statement remains in effect; provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(f) Make available for inspection by the Electing Investors, any underwriter(s) participating in a disposition of Registrable Securities and any counsel or accountants retained by the Electing Investors or underwriter(s), all financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries as is reasonable and customary, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate in customary due diligence sessions, in each case reasonably requested by any such representative, underwriter(s), counsel or accountant in connection with a customary due diligence review; provided that (i) any party receiving confidential materials shall execute a confidentiality agreement on customary terms if reasonably requested by the Company and (ii) the Company may in its reasonable discretion restrict access to competitively sensitive or legally privileged documents or information;

(g) Enter into customary agreements and take such other actions as are reasonably required in order to facilitate the disposition of Registrable Securities, including, if the method of distribution of Registrable Securities is by means of an underwritten offering, using commercially reasonable efforts to (i) cause the chief executive officer and chief financial officer to be available at reasonable dates and times to participate in "road show" presentations and/or investor conference calls to market the Registrable Securities during normal business hours, on reasonable advance notice and without undue burden or hardship on the Company; provided that the aggregate number of days of "road show" presentations in connection with an underwritten offering of Registrable Securities for each registration pursuant to a demand made under Section 3 shall not exceed three (3) Business Days; and (ii) negotiate and execute an underwriting agreement in customary form with the managing underwriter(s) of such offering and such other documents reasonably required under the terms of such underwriting arrangements, including using reasonable best efforts to procure a customary legal opinion and customary auditor comfort letters. The Electing Investors shall also enter into and perform their obligations under such underwriting agreement;

(h) If such securities are being sold through underwriters, use reasonable best efforts to (i) furnish, on the date that such Registrable Securities are delivered to the underwriters, an opinion, dated as of such date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and a "negative assurance letter," dated as of such date, of the legal counsel representing the Company for purposes of such registration, in form and substance as is customarily given to underwriters and (ii) furnish, on the date of the underwriting agreement and on the date that the Registrable Securities are delivered to the underwriters, a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(i) Use reasonable best efforts to list the Registrable Securities covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(j) Give notice to the Electing Investors as promptly as reasonably practicable:

(i) when any registration statement filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or any amendment to such registration statement has been filed with the Commission and when such registration statement or any post-effective amendment to such registration statement has become effective;

(ii) when the prospectus or any prospectus supplement has been filed and, with respect to such registration statement, when the same has become effective;

(iii) of any request by the Commission or other federal or state governmental authority for additional information regarding, or amendments or supplements to, any registration statement (or any information incorporated by reference in, or exhibits to, such registration statement) filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or the prospectus (including information incorporated by reference in such prospectus) included in such registration statement;

(iv) of the issuance by the Commission of any stop order suspending the effectiveness of any registration statement filed pursuant to Sections 2 or 3 or in which Registrable Securities are included pursuant to Section 6 or the initiation of any proceedings for that purpose;

(v) if at any time the Company has reason to believe that the representations and warranties of the Company or any of its subsidiaries contained in any agreement (including any underwriting agreement contemplated by Section 8(g) above) relating to the disposition of Registrable Securities cease to be true and correct;

(vi) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the Common Stock for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(vii) at any time when a prospectus relating to any such registration statement is required to be delivered under the 1933 Act, of the happening of any event as a result of which such prospectus (including any material incorporated by reference or deemed to be incorporated by reference in such prospectus), as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, which event requires the Company to make changes in such effective registration statement and prospectus in order to make the statements therein or incorporated by reference therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made and shall not contain any material, non-public information about the Company);

(k) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 8(j)(iv) at the earliest practicable time;

(l) Cooperate with the Electing Investors and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(m) Upon the occurrence of any event contemplated by Section 8(j)(vii), reasonably promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Electing Investors, the prospectus will not contain (or incorporate by reference) an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Electing Investors in accordance with Section 8(j)(vii) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Electing Investors shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such prospectus (at the Company's expense) other than permanent file copies then in the Electing Investors' possession, and the period of effectiveness of such registration statement provided for in Section 8(a) above shall be extended by the number of days from and including the date of the giving of such notice to the date the Electing Investors shall have received such amended or supplemented prospectus pursuant to this Section 8(m); and

(n) Use reasonable best efforts to procure the cooperation of the Company's transfer agent in settling any offering or sale of Registrable Securities, including, if applicable, the transfer of physical stock certificates into book-entry form in accordance with any procedures reasonably requested by the Electing Investors or the managing underwriter(s). In connection therewith, if reasonably required by the Company's transfer agent, the Company shall, promptly after the effectiveness of the registration statement, cause an opinion of counsel as to the effectiveness of the registration statement to be delivered to and maintained with its transfer agent, together with any other authorizations, certificates and directions required by the transfer agent which authorize and direct the transfer agent to issue such Registrable Securities without legend upon sale by the holder of such shares of Registrable Securities under the registration statement.

9. Suspension of Sales. Upon receipt of written notice from the Company pursuant to Section 8(j)(vii), the Electing Investors shall immediately discontinue disposition of Registrable Securities until they (i) have received copies of a supplemented or amended prospectus or prospectus supplement pursuant to Section 8(m) or (ii) are advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Electing Investors shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in the Electing Investors' possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice.

10. Limitation on Subsequent Registration Rights. From and after the date hereof, the Company shall not enter into any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities that conflict with the rights granted to the Investors herein without the prior written consent of the Investors holding a majority of the Registrable Securities. It is agreed that the granting of *pro rata* registration rights to any other investor in the Company shall not be considered to conflict with the rights granted to the Investors herein.

11. Free Writing Prospectuses. The Electing Investors shall not use any free writing prospectus (as defined in Rule 405 under the 1933 Act) in connection with the sale of Registrable Securities without the prior written consent of the Company; provided that the Electing Investors may use any free writing prospectus prepared and distributed by the Company.

12. Indemnification.

(a) Notwithstanding any termination of this Agreement, the Company shall indemnify and hold harmless each of the Electing Investors and each of their respective current and former officers, directors, employees, agents, partners, members, stockholders, representatives and Affiliates, and each Person or entity, if any, that controls the Electing Investors within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act and the officers, directors, employees, agents and employees of each such controlling Person, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the 1933 Act (each, an "Investor Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals), joint or several, arising out of or based upon any untrue or alleged untrue statement of material fact contained or incorporated by reference in any registration statement, prospectus, preliminary prospectus or final prospectus contained therein, offering circular or other document, or any amendment or supplement thereto, or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto; any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or any violation by the Company of any rule or regulation promulgated under the 1933 Act, the 1934 Act or state securities laws applicable to the Company in connection with any such registration, and the Company will reimburse each of the Investor Indemnitees for any reasonable legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action, as such expenses are incurred; provided that the Company shall not be liable to such Investor Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (i) an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein, offering circular or other document, or any such amendments or supplements thereto or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act) prepared by the Company or authorized by it in writing for use by the Investors or any amendment or supplement thereto, in reliance upon and in conformity with information regarding such Investor Indemnitee or its plan of distribution or ownership interests which such Investor Indemnitee furnished in writing to the Company for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein, offering circular or other document, or any such amendments or supplements thereto, (ii) offers or sales effected by or on behalf of such Investor Indemnitee "by means of" (as defined in Rule 159A under the 1933 Act) a "free writing prospectus" (as defined in Rule 405 under the 1933 Act) that was not authorized in writing by the Company, or (iii) the failure to deliver or make available to a purchaser of Registrable Securities a copy of any preliminary prospectus, pricing information or final prospectus contained in the applicable registration statement or any amendments or supplements thereto (to the extent the same is required by applicable law to be delivered or made available to such purchaser at the time of sale of contract); provided that the Company shall have delivered to each Electing Investor such preliminary prospectus or final prospectus contained in the applicable registration statement and any amendments or supplements thereto pursuant to Section 8(d) no later than the time of contract of sale in accordance with Rule 159 under the 1933 Act.

(b) Each Electing Investor shall, severally and not jointly, indemnify and hold harmless the Company and its officers, directors, employees, agents, representatives and Affiliates, each underwriter, if any, of the Company's securities covered by such a registration, each Person who controls the Company or such underwriter within the meaning of Section 15 of the 1933 Act, and each other Electing Investor and each of such other Electing Investor's officers, directors, partners and members and each Person controlling such other Electing Investor within the meaning of Section 15 of the 1933 Act, against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals) arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular or other document, or any amendment or supplement thereto, or contained in any "issuer free writing prospectus" (as such term is defined in Rule 433 under the 1933 Act), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, but only to the extent that such untrue statements or omissions are based solely upon information regarding such Electing Investor furnished in writing to the Company by such Electing Investor expressly for use therein. In no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds received by such Electing Investor upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) If any proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party") with respect to a claim for which indemnity is required under this Agreement, such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense in such proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with such defense; provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Section 12, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party. An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense of such proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (i) the Indemnifying Party has agreed in writing to pay such fees and expenses; (ii) the Indemnifying Party shall have failed promptly to assume the defense of such proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such proceeding; or (iii) the named parties to any such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that representation of both such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate because of an actual conflict of interest between the Indemnifying Party and such Indemnified Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party); provided that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to, but only to the extent necessary, one local counsel) at any time for all Indemnified Parties. The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), effect any settlement of any pending proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such proceeding. All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section 12) shall be paid to the Indemnified Party, as incurred, promptly upon receipt of written notice thereof by the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification under this Section 12).

(d) If the indemnification provided for in Sections 12(a) or 12(b) is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to in Sections 12(a) or 12(b), as the case may be, or is insufficient to hold the Indemnified Party harmless as contemplated therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, actions, liabilities, costs or expenses, in such proportion as is appropriate to reflect the relative fault of the Indemnified Party, on the one hand, and the Indemnifying Party, on the other hand, in connection with the statements, omissions or violations which resulted in such losses, claims, damages, actions, liabilities, costs or expenses, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and of the Indemnified Party, on the other hand, shall be determined by reference to, among other factors, whether the untrue or alleged untrue statement of a material fact or omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Investors agree that it would not be just and equitable if contribution pursuant to this Section 12(d) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 12(d). Notwithstanding the foregoing, in no event shall the liability of any Electing Investor hereunder be greater in amount than the dollar amount of the net proceeds received by such Electing Investor upon the sale of the Registrable Securities giving rise to such contribution obligation. No Indemnified Party guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from an Indemnifying Party not guilty of such fraudulent misrepresentation.

13. Agreement to Furnish Information. If requested by the Company or the book-running managing underwriter(s) in an underwritten offering of Common Stock (or other securities of the Company convertible into Common Stock), each Electing Investor shall provide such information regarding itself and its Registrable Securities as may be reasonably required by the Company or such representative of the book-running managing underwriter(s) in connection with the filing of a registration statement and the completion of any public offering of the Registrable Securities pursuant to this Agreement.

14. Rule 144 Reporting. With a view to making available to the Investors the benefits of certain rules and regulations of the Commission which may permit the sale of the Registrable Securities that are Common Stock to the public without registration, the Company agrees to use its reasonable best efforts to: (a) make and keep public information available, as those terms are understood and defined in Rule 144 under the 1933 Act or any similar or analogous rule promulgated under the 1933 Act, at all times after the effective date of this Agreement ("Rule 144"); (b) file with the Commission, in a timely manner, all reports and other documents required of the Company under the 1934 Act; and (c) so long as the Investors own any Registrable Securities, furnish to such Investors forthwith upon request: (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and of the 1934 Act; and (ii) unless otherwise available at no charge by access electronically to the Commission's EDGAR filing system (or any successor system), a copy of the most recent annual or quarterly report of the Company and such other reports and documents as such Investors may reasonably request in availing themselves of any rule or regulation of the Commission allowing them to sell any such Common Stock without registration.

15. Miscellaneous.

(a) Termination of Registration Rights. The registration rights of any particular Investor granted under this Agreement shall terminate with respect to such Investor upon the date upon which neither the Investor nor any of its Affiliates holds any Registrable Securities.

(b) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed in all respects by the internal laws of the State of New York without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

(c) Jurisdiction; Jury Trial. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 15(h) and as permitted by applicable law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN.

(d) Specific Performance. Each of the Investors, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other party hereto would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that the Investors, on the one hand, and the Company, on the other hand (the "Moving Party"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 15(d) is not the exclusive remedy for any violation of this Agreement.

(e) Successors and Assigns. Except as otherwise provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, heirs and permitted assigns (including, for the avoidance of doubt, any of the Investors' Affiliates) of the parties; provided, however, that in the event that any Person acquires or becomes a transferee or assignee of any Registrable Securities, such Person shall, without any further writing or action of any kind, be deemed a beneficiary hereof for all purposes and such Registrable Securities shall be held subject to all the terms of this Agreement, and by taking and holding such Registrable Securities such Person shall be treated as an "Investor" for all purposes under this Agreement and shall be entitled to receive the benefits of, and be conclusively deemed to have agreed to be bound by all of the applicable terms and provisions of, this Agreement.

(f) No Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, this Agreement is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person; provided, however, that each Indemnified Party (but only, in the case of an Investor Indemnitee, if such Investor Indemnitee has complied with the requirements of Section 12(c), including the first proviso of Section 12(c)) shall be entitled to the rights, remedies and obligations provided to an Indemnified Party under Section 12, and each such Indemnified Party shall have standing as a third-party beneficiary under Section 12 to enforce such rights, remedies and obligations.

(g) Entire Agreement. This Agreement and the other Transaction Documents supersede all other prior or contemporaneous agreements and understandings, both written and oral, between the Investors, the Company, their Affiliates and Persons acting on their behalf with respect to the subject matter hereof and thereof, and this Agreement, the other Transaction Documents, and the instruments referenced herein and therein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to any such matters.

(h) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail; or (iii) one Business Day after deposit with an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier), in each case properly addressed to the party to receive the same; provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one Business Day after e-mail by dispatch pursuant to one of the methods described in the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Cathy King
E-mail: cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to the Investors: to the address set forth in the Purchase Agreement.

or to such other address and/or e-mail address and/or to the attention of such other person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, and recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service, receipt by facsimile or e-mail or receipt from an overnight courier service in accordance with clause (i) or (ii) above, respectively.

(i) Delays or Omissions. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and not exclusive of any other remedies provided by law.

(j) Expenses. The Company and the Investors shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby, except as otherwise provided in Section 7.

(k) Amendments and Waivers. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the holders of at least a majority of the Registrable Securities then outstanding or, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this Section 15(k) shall be binding upon each holder of any Registrable Securities at the time outstanding (including securities convertible into Registrable Securities), each future holder of all such Registrable Securities and the Company. No such amendment shall be effective to the extent that it applies to less than all of the Investors or holders of Registrable Securities.

(l) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile or .pdf format signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(m) Severability. If any provision of this Agreement is prohibited by law or otherwise becomes or is declared by a court of competent jurisdiction to be invalid or unenforceable, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties hereto will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(n) Headings; Interpretation. The headings used in this Agreement are used for convenience of reference only and are not to be considered part of, or affect the interpretation of, this Agreement. When a reference is made in this Agreement to a Section or Schedule, such reference shall be to a Section or Schedule of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules) and not to any particular provision of this Agreement. Unless otherwise specified in this Agreement, the term "dollars" and the symbol "$" mean U.S. dollars for purposes of this Agreement and all amounts in this Agreement shall be paid in U.S. dollars. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Agreement means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the 1933 Act or 1934 Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff "no-action," interpretive and exemptive letters, and staff compliance and disclosure interpretations (including "telephone interpretations") of such section or rule by the Commission. Each of the parties hereto has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it were drafted by each of the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

(o) Further Assurances. Each party hereto shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

[*Signature pages follow.*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh
Name: Savneet Singh
Title: President and
Chief Executive Officer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

The Funds and Accounts listed on Attachment A
Each fund, severally, and not jointly

By: T. Rowe Price Associates, Inc., investment adviser or subadviser, as applicable

By: /s/ Andrew Baek

Name: Andrew Baek
Title: Vice President

Address:
T. Rowe Price Associates, Inc.
100 East Pratt Street
Baltimore, MD 21202
Attn.: Andrew Baek, Vice President
Phone: 410-345-2090
E-mail: andrew.baek@troweprice.com

[Signature Page to Registration Rights Agreement]

T. ROWE PRICE ASSOCIATES, INC.
SCHEDULE "A" - PAR TECHNOLOGY CORPORATION
COMMON STOCK

$ 68.00000	Cost/Share

Fund Name	Quantity	Cost
T. Rowe Price Small-Cap Stock Fund, Inc.	953,391	$ 64,830,588.00
T. Rowe Price Institutional Small-Cap Stock Fund	555,173	$ 37,751,764.00
T. Rowe Price Spectrum Conservative Allocation Fund	7,454	$ 506,872.00
T. Rowe Price Spectrum Moderate Allocation Fund	11,684	$ 794,512.00
T. Rowe Price Spectrum Moderate Growth Allocation Fund	21,153	$ 1,438,404.00
T. Rowe Price Moderate Allocation Portfolio	883	$ 60,044.00
U.S. Small-Cap Stock Trust	48,091	$ 3,270,188.00
TD Mutual Funds - TD U.S. Small-Cap Equity Fund	49,607	$ 3,373,276.00
T. Rowe Price U.S. Small-Cap Core Equity Trust	292,819	$ 19,911,692.00
Minnesota Life Insurance Company	11,784	$ 801,312.00
Costco 401(k) Retirement Plan	49,643	$ 3,375,724.00
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund	12,552	$ 853,536.00
T. Rowe Price Small-Cap Value Fund, Inc.	192,603	$ 13,097,004.00
T. Rowe Price U.S. Small-Cap Value Equity Trust	66,590	$ 4,528,120.00
T. Rowe Price U.S. Equities Trust	3,656	$ 248,608.00
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund	2,329	$ 158,372.00
	2,279,412	$155,000,016.00

SCHEDULE 1

SCHEDULE OF INVESTORS

T. Rowe Price Small-Cap Stock Fund, Inc.
T. Rowe Price Institutional Small-Cap Stock Fund
T. Rowe Price Spectrum Conservative Allocation Fund
T. Rowe Price Spectrum Moderate Allocation Fund
T. Rowe Price Spectrum Moderate Growth Allocation Fund
T. Rowe Price Moderate Allocation Portfolio
U.S. Small-Cap Stock Trust
TD Mutual Funds - TD U.S. Small-Cap Equity Fund
T. Rowe Price U.S. Small-Cap Core Equity Trust
Minnesota Life Insurance Company
Costco 401(k) Retirement Plan
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund
T. Rowe Price Small-Cap Value Fund, Inc.
T. Rowe Price U.S. Small-Cap Value Equity Trust
T. Rowe Price U.S. Equities Trust
MassMutual Select Funds - MassMutual Select T. Rowe Price Small and Mid Cap Blend Fund

Exhibit 10.6

Execution Version

INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "Agreement") is made and entered into as of April 8, 2021 by and between PAR Technology Corporation, a Delaware corporation (the "Company"), and PAR Act III, LLC, a Delaware limited liability company ("Act III," and together with any transferees of the Securities (as defined in the Purchase Agreement) who are Affiliates (as defined in the Purchase Agreement) of Act III and agree to become parties to this Agreement, each an "Investor" and collectively, the "Investors") (each of the Company and the Investors, a "Party" to this Agreement, and collectively, the "Parties").

RECITALS

WHEREAS, the Company and Act III are parties to that certain Securities Purchase Agreement, dated as of April 8, 2021 (the "Purchase Agreement"), pursuant to which Act III became the holder of 73,530 shares of common stock, par value $0.02 per share, of the Company (the "Common Stock" and such shares, the "Common Shares") and a holder of 500,000 Warrants (as defined in the Common Share Purchase Warrant);

WHEREAS, in connection with the investment contemplated by the Transaction Documents (as defined in the Purchase Agreement), the Company and Investors have determined to come to an agreement with respect to certain governance matters as well as certain other matters, as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

1. Board Appointment and Related Agreements.

(a) Board Appointment

(i) From the date of this Agreement until the Company's 2021 annual meeting of stockholders (the "2021 Annual Meeting"), Act III shall have the right (which right may not be assigned or transferred to any other Person) to designate one (1) person (the "Director Nominee"), who shall be designated by the Investor Representative, for appointment to the Company's Board of Directors (the "Board"). The initial Director Nominee is Keith Pascal (the "Initial Director Nominee"), and any replacement thereof shall be designated by Ronald M. Shaich (the "Investor Representative") or any replacement thereof approved by Act III.

(ii) Prior to the Closing Date (as defined in the Purchase Agreement), the Nominating Committee has determined the Initial Director Nominee is reasonably acceptable to the Board and satisfies the Independent Director Criteria, and such nomination has been recommended by the Nominating Committee and approved by the Board, the Board has taken all necessary actions to promptly appoint the Initial Director Nominee as a director of the Company on the Closing Date.

(iii) On the Closing Date (as defined in the Purchase Agreement), the Company shall (A) increase the size of the Board from five (5) to six (6) directors and (B) appoint the Initial Director Nominee to the Board. As used in this Agreement, an "Appointed Director" means any Director Nominee, including the Initial Director Nominee, who is elected or appointed to the Board to serve as a director of the Company, including a Replacement Director.

(iv) Any Director Nominee shall (a) have business, restaurant, marketing, technology, accounting, finance and/or other experiences or expertise relevant to the Company's business, (b) be reasonably acceptable to the Nominating and Corporate Governance Committee of the Board (the "Nominating Committee") and the Board, (c) qualify as "independent" pursuant to the New York Stock Exchange listing requirements and satisfy any other criteria applicable to "independent" directors under such listing requirements and under applicable law and the rules and regulations of the Securities and Exchange Commission (the "Commission") and (d) have provided the items that would be required of an independent director pursuant the Company's normal director intake procedures (including completion of a standard director and officer questionnaire and completion of a background check) (clauses (a)-(d), the "Independent Director Criteria").

(v) The Company agrees that, subject to his or her satisfaction of the Independent Director Criteria, the Board shall nominate for election to the Board, along with its other nominees, the Appointed Director (who may be the Initial Director Nominee) at the 2021 Annual Meeting and shall recommend, support and solicit proxies for the election of such Appointed Director at such meeting in the same manner as it recommends, supports, and solicits proxies for the election of any continuing directors.

(vi) If any Appointed Director is unable or unwilling to serve as a director and ceases to be a director, resigns as a director, is removed as a director, or for any other reason fails to serve or is not serving as a director, the Investor Representative shall have the right to designate a person to be a replacement director (any such replacement nominee, when appointed to the Board, shall be referred to as a "Replacement Director"); provided that the rights under this sentence shall terminate on the earlier of (i) such time as the Appointed Director is not elected to the Board by the Company's stockholders at the 2021 Annual Meeting and (ii) immediately prior to the 2022 annual meeting of Company stockholders. Any Replacement Director must satisfy the Independent Director Criteria. Within ten (10) business days of his or her name being submitted to the Nominating Committee, the Nominating Committee shall determine whether the Director Nominee with respect to the Replacement Director is reasonably acceptable to the Board, and if such nomination is recommended by the Nominating Committee and approved by the Board, the Board shall take all necessary actions to promptly appoint such Director Nominee as a director of the Company within five (5) business days of the Nominating Committee's recommendation.

(b) Director Compensation. The Appointed Director shall be entitled to (i) reimbursement of expenses and indemnification in the same manner and to the same extent as the other members of the Board, in accordance with the Company's organizational documents and on the basis of the director indemnification agreement with the Company, and (ii) compensation in the same manner and to the same extent as the other members of the Board that are compensated as members of the Board.

2. Board Observer Rights and Related Agreements.

(a) Board Observer

(i) From the date of this Agreement until the first anniversary of this Agreement, Act III shall have the right (which right may not be assigned or transferred to any other Person) to designate Ronald M. Shaich to serve as an observer (the "Voluntary Observer") at meetings of the Board; provided that, after the first anniversary in the event either the Investor or the Company, in their respective reasonable discretion, determine that such arrangement is no longer beneficial to the Company, the Voluntary Observer shall be deemed to no longer be an observer of the Board effective upon notice of such determination to the other party; provided, further that Act III and the Company may mutually agree that the Voluntary Observer shall continue beyond such initial one (1) year period until such time as Act III and the Company shall mutually agree.

(ii) In the event the Appointed Director is not elected to the Board by the Company's stockholders at the 2021 Annual Meeting, Act III shall have the right (which right may not be assigned or transferred to any other Person) to designate one (1) additional Observer (the "Primary Observer" and, together with the Voluntary Observer, the "Observers"), who shall be designated by the Investor Representative, to serve as an observer at meetings of the Board, which Primary Observer shall be acceptable to the Company (such acceptance not to be unreasonably withheld, conditioned or delayed); provided that no designee may serve as the Primary Observer if he or she has been convicted of, or pled guilty or no contest to, a felony having as its predicate element fraud or moral turpitude).

(iii) The Company agrees that (A) it will notify each of the Observers of, and each Observer may attend, in a non-voting observer capacity, all meetings of the Board (subject to the below and except to the extent an Observer has been excluded therefrom pursuant to Section 2(a)(v) below) for the purposes of permitting the Observers to have current information with respect to the affairs of the Company and actions taken by the Board. Other than the Board's annual strategy meeting, annual operating plan (AOP) meeting, meeting immediately following the Company's annual meeting of stockholders, and such other Board and committee meetings, the purpose(s) of which are strategic in nature, which, for the avoidance of doubt, the Voluntary Observer shall have the option of attending, (but with respect to committee meetings, only those to which non-committee members are invited to attend), upon receipt of such notice, the Voluntary Observer and the Lead Director with respect to meetings of the full Board, or, the relevant committee chair with respect to meetings of any Board committee shall discuss and mutually agree if the Voluntary Observer will attend the relevant meeting. Subject to the forgoing, each Observer shall have the right to be heard at any such meetings, but in no event shall an Observer: (1) be deemed to be a member of the Board; or (2) have the right to vote on any matter under consideration by the Board or otherwise have any power to cause the Company to take, or not to take, any action. As a non-voting observer, each Observer will also be provided (concurrently with delivery to the directors of the Company and in the same manner delivery is made to them) copies of all notices, minutes, consents, and all other materials and information (financial or otherwise) that are provided to the directors with respect to a meeting or any written consent in lieu of a meeting of the Board (except to the extent an Observer has been excluded therefrom pursuant to Section 2(a)(v) below).

(iv) If a meeting of the Board is conducted via telephone or other electronic medium (*e.g.*, videoconference), the Observers may attend such meeting via the same medium; provided, however, that each Observer shall not knowingly provide any other person access to such meeting without the Company's express written consent and, provided further, that each Observer may provide such access to his or her assistant for the limited purpose of managing such Observer's calendar and other administrative tasks related thereto and any inadvertent access by another person which is promptly remedied upon discovery by such Observer shall not be deemed to breach the provisions of this Section 2(a)(iv).

(v) Notwithstanding the foregoing, the Company may exclude the Observers from access to any material or meeting or portion thereof if the Board determines it is necessary to do so in its reasonable discretion and good faith (which determination may be made without participation of the Observers), that (1) upon advice of the Company's legal counsel, such exclusion is reasonably necessary to preserve attorney-client privilege; provided, however, that any such exclusion shall apply only to such portion of the material or such portion of the meeting which would be required to preserve such privilege and not to any other portion thereof, (2) such portion of a meeting is an executive session limited solely to independent director members of the Board, independent auditors and/or legal counsel, as the Board may designate, and any Observer (assuming such Observer were a member of the Board for such determination) would not meet the then-applicable standards for independence adopted by the Commission, the New York Stock Exchange or such other exchange on which the Company's securities are then traded, (3) such material is subject to a binding confidentiality obligation to a third party that the Company reasonably determines, after consulting with legal counsel, specifically restricts the Company's ability to disclose it to a Board's observer; provided that the Company uses commercially reasonable efforts to obtain any consents or waivers from the relevant third parties such that the relevant materials may be disclosed or provide the Observer with redacted copies of documents containing such materials, (4) such exclusion is necessary to avoid a conflict of interest or disclosure of competitively sensitive information; provided, however, that any such exclusion shall only apply to such portion of such material or meeting which would be required to avoid such conflict of interest or disclosure of such competitively sensitive information, or (5) such exclusion is necessary for the Company to negotiate transactions with any member of the Investor Group on an arms' length basis.

(vi) The Company shall reimburse each Observer for all reasonable out-of-pocket expenses incurred by the Observer in connection with attendance at Board meetings in the same manner and to the same extent as the other members of the Board, in accordance with the Company's applicable policies. All reimbursements payable by the Company pursuant to this Section 2(a)(vi) shall be paid to the Observer at the same time as comparable reimbursement is paid to the members of the Board, as applicable.

(vii) If the Primary Observer (or replacement thereof) is unable or unwilling to serve as an observer, resigns as an observer, is removed as an observer, or for any other reason fails to serve as an observer, the Investor Representative shall have the right, subject to Section 2(b), to designate a person to be a replacement Primary Observer in accordance with Section 2(a)(ii).

(b) Primary Observer Resignation Event. The Primary Observer shall be deemed to no longer be an observer of the Board effective, and Act III's right to appoint a Primary Observer (or substitute or replacement thereof) shall terminate on the date of, the Company's 2022 annual meeting of stockholders.

3. Standstill. Until the earlier of (A) the second (2nd) anniversary of the date of the this Agreement, or (B) the first date on which there is no Appointed Director (including any Replacement Director) or any Observers on the Board and the Investor is no longer entitled to designate any Appointed Director (including any Replacement Director) or Observer (the "Standstill End Date"), without the prior written consent of the Company, the Investors will not, nor will they cause or permit any of their respective controlled Affiliates (as defined in the Purchase Agreement) to:

(a) effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or cause or participate in or in any way assist, facilitate or encourage any other Person (as defined in the Purchase Agreement) to effect or seek, offer or propose (whether publicly or otherwise) to effect or participate in, (i) any acquisition of any securities (or beneficial ownership thereof), or rights or options to acquire any securities (or beneficial ownership thereof), or any assets, indebtedness or businesses of the Company or its Subsidiaries (as defined in the Purchase Agreement), (ii) any tender or exchange offer, merger or other business combination involving the Company or its Subsidiaries or assets of the Company or its Subsidiaries constituting a significant portion of the consolidated assets of the Company and its Subsidiaries, or (iii) any "solicitation" of "proxies" (as such terms are used in the proxy rules of the Commission) or consents to vote any voting securities of the Company or any of its Subsidiaries;

(b) form, join or in any way participate in a "group" (as defined under the 1934 Act) with respect to the Company or otherwise act in concert with any Person in respect of any such securities;

(c) otherwise act, alone or in concert with others, to seek representation on or to control or influence the management, Board or policies of the Company or to obtain representation on the Board of the Company (other than pursuant to the terms of this Agreement);

(d) take any action which would or would reasonably be expected to force the Company to make a public announcement regarding any of the types of matters set forth in clause (a) above; or

(e) enter into any discussions or arrangements with any third party with respect to any of the foregoing;

it being understood that nothing in this Section 3 shall restrict or prohibit (x) any Appointed Director from taking any action, or refraining from taking any action, which he or she determines, in his or her reasonable discretion, is necessary to fulfill his or her fiduciary duties as a member of the Board, (y) the Investors' or any of its controlled Affiliates'(as defined in the Purchase Agreement) acquisition of any Equity Securities (as defined in Section 4(h)) (I) paid as dividends or acquired pursuant to Section 4 of this Agreement, in each case, in accordance with the terms of this Agreement or (II) in connection with the exercise of the Warrant, or (z) the acquisition by the Investors or any of its controlled Affiliates of equity or debt securities of the Company or any of its Subsidiaries (as defined in the Purchase Agreement), or voting such securities and otherwise exercising its rights and privileges with respect to such securities, so long as such acquisition, voting or exercise of the rights and privileges, would not constitute a violation of clauses (a)(ii) and (iii) or (b) through (e) above and after any such acquisition, voting or exercise of the rights and privileges pursuant to this clause (z), the Investors do not have collective beneficial ownership (as determined under Rule 13d-3 promulgated under the 1934 Act) of a number of Common Shares or shares or rights convertible or exercisable into Common Shares, including the Warrant (whether or not presently convertible or exercisable) that, in the aggregate, are convertible or exercisable into and/or equal 10.0% or more of the then-outstanding Common Stock (on an as-converted and as-exercised basis), including the Warrant (which, for purposes of this Agreement, regardless of whether the right to purchase Common Shares with respect to the Warrant can be exercised for cash or through cashless exercise, in each case, in accordance with the terms of the Warrant).

4. Preemptive Rights.

(a) Notwithstanding anything contained in Section 3, until the date that is eighteen (18) months from the date hereof, if the Company makes any public or non-public offering of any New Securities, each Investor shall be afforded the opportunity (which right may not be assigned or transferred to any other Person) to acquire from the Company all or a portion of such Investor's Preemptive Rights Portion of such New Securities on such terms and for the same price as that offered to the other purchasers of such New Securities; provided, that such Investor shall not be entitled to acquire any New Securities pursuant to this Section 4 to the extent the issuance of such New Securities to such Investor would require approval of the stockholders of the Company as a result of any such Investor's status, if applicable, as an Affiliate of the Company or pursuant the applicable rules, listing requirements and regulations of the New York Stock Exchange, in which case the Company may consummate the proposed issuance of New Securities to other Persons (as defined in the Purchase Agreement) prior to obtaining approval of the stockholders of the Company (subject to compliance by the Company with Section 4(e) below).

(b) If the Company proposes to offer New Securities, it shall give the Investors written notice of its intention, describing the anticipated price (or range of anticipated prices), anticipated amount of New Securities and other material terms and timing upon which the Company proposes to offer the same (including, in the case of a registered public offering and to the extent possible, a copy of the prospectus included in the registration statement filed with respect to such offering) at least seven (7) business days prior to such issuance or, in the case of a registered public offering, at least seven (7) business days prior to the commencement of such offering (provided that, to the extent the terms of such offering cannot reasonably be provided seven (7) business days prior to such issuance, notice of such terms may be given as promptly as reasonably practicable but in any event prior to such issuance or commencement). The Company may provide such notice to the Investors on a confidential basis prior to public disclosure of such offering. Other than in the case of a registered public offering, the Investor Representative may notify the Company in writing at any time on or prior to the second (2nd) business day immediately preceding the date of such issuance (or, if notice of all such terms has not been given prior to the second (2nd) business day immediately preceding the date of such issuance, at any time prior to such issuance) whether any of the Investors will exercise such preemptive rights and as to the amount of New Securities the Investors desire to purchase, up to the such Investor's Preemptive Rights Portion. In the case of a registered public offering, the Investor Representative shall notify the Company in writing at any time prior to the second (2nd) business day immediately preceding the date of commencement of such registered public offering (or, if notice of all such terms has not been given prior to the second (2nd) business day immediately preceding the date of commencement of such registered public offering, at any time prior to the date of commencement of such registered public offering) whether any of the Investors will exercise such preemptive rights and as to the amount of New Securities the Investors desire to purchase, up to such Investor's Preemptive Rights Portion. Such notice to the Company shall constitute a binding commitment by the Investors to purchase the amount of New Securities so specified at the anticipated price (or range of anticipated prices) and other terms set forth in the Company's notice to it. Subject to receipt of the requisite notice of such issuance by the Company, the failure of the Investor Representative to respond prior to the time a response is required pursuant to this Section 4(b) shall be deemed to be a waiver of the Investors' purchase rights under this Section 4 only with respect to the offering described in the applicable notice.

(c) Each Investor shall purchase the New Securities that it has elected to purchase under this Section 4 concurrently with the related issuance of such New Securities by the Company (subject to the receipt of any required approvals from any governmental entity to consummate such purchase by such Investor, which such Investor shall use its reasonable best efforts and cooperate with the Company, as applicable, to obtain). If the proposed issuance by the Company of securities which gave rise to the exercise by the Investor of its preemptive rights pursuant to this Section 4 shall be terminated or abandoned by the Company without the issuance of any securities, then the purchase rights of the Investors pursuant to this Section 4 shall also terminate as to such proposed issuance by the Company (but not any subsequent or future issuance), and any funds in respect thereof paid to the Company by the Investors in respect thereof shall be promptly refunded in full.

(d) In the case of the offering of securities for consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair value thereof as reasonably determined by the Board; provided, however, that such fair value as determined by the Board shall not exceed the aggregate market price of the securities being offered as of the date the Board authorizes the offering of such securities.

(e) In the event that the Investors are not entitled to acquire any New Securities pursuant to this Section 4 because such issuance would require the Company to obtain stockholder approval in respect of the issuance of such New Securities to the Investors as a result of any such Investor's status, if applicable, as an Affiliate of the Company or pursuant the applicable rules, listing requirements and regulations of the New York Stock Exchange, the Company shall, upon the Investor's reasonable request delivered to the Company in writing within seven (7) business days following the Investor's receipt of the written notice by the Company of such issuance to the Investors pursuant to this Section 4, consider and discuss in good faith modifications proposed by the Investors to the terms and conditions of such portion of the New Securities which would otherwise be issued to the Investors such that the Company would not be required to obtain stockholder approval in respect of the issuance of such New Securities as so modified.

(f) If the Investors do not elect to purchase their respective Preemptive Rights Portion of the New Securities pursuant to this Section 4, the Company may sell such portion of the New Securities on terms and conditions that are not materially more favorable in the aggregate to the applicable purchaser(s) than those set forth in the written notice of such offer. If such sale is not consummated within 120 days of the date upon which the written notice of such offer was given, then no issuance of such New Securities may be made thereafter by the Company without again offering the same to the Investors in accordance with this Section 4. The election by any Investor to not exercise its subscription rights under this Section 4 in any one instance shall not affect its right as to any subsequent proposed issuance.

(g) The Company and the Investors shall cooperate in good faith to facilitate the exercise of the Investors' rights pursuant to, and in accordance with the terms of, this Section 5.

(h) For purposes of this Section 4, the following terms have the following meanings:

(i) "Convertible Securities" means any security convertible into or exchangeable for capital stock of the Company.

(ii) "Equity Securities" means (A) the capital stock of the Company, (B) all Convertible Securities and (C) all Options to acquire from the Company shares of such capital stock or such Convertible Securities.

(iii) "Excluded Securities" means (A) any securities issued by the Company as full or partial consideration in connection with a *bona fide* merger, acquisition, consolidation, business combination, purchase of the capital stock or assets of, or transaction or series of transactions with, an unaffiliated third-party that is the result of arm's length negotiations, including, for the avoidance of doubt, any securities issued by the Company as consideration pursuant to the Prism Merger Agreement (as defined in the Purchase Agreement); (B) any shares of capital stock or options to purchase shares of capital stock, or other equity-based awards (including restricted stock units), issued or granted to existing or former employees (or prospective employees who have accepted an offer of employment), directors or consultants (in each case, as defined in the Company's equity incentive plans) of the Company or any of its Subsidiaries (as defined in the Purchase Agreement), pursuant to equity incentive plans, including the Company's equity incentive plans existing on the date hereof and any future equity incentive plans adopted by the Company, as such plans may be amended or supplemented, in each case, that have been approved by the full Board or a majority of the independent members of the Board and requisite vote of the Company's stockholders, as applicable (in each case, including with respect to any amendment or supplement thereof) or that exist as of the date of this Agreement, including, for the avoidance of doubt, any shares of Common Stock issuable upon exercise of any such Option or settlement or vesting of any equity-based award issued under such plans; (C) any shares of capital stock issuable upon exercise of any option of Prism (as defined in the Purchase Agreement) assumed by the Company pursuant to the Prism Merger Agreement (as defined in the Purchase Agreement); (D) any securities issued pursuant to any employee stock purchase plan approved by the Board and the Company's stockholders; (E) securities issued by the Company upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of capital stock, including the Warrant Shares and shares of Common Stock issuable upon conversion of Convertible Notes (as defined in the Purchase Agreement), and are outstanding as of the date of this Agreement, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the date of this Agreement; (F) securities issued by the Company pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution approved by a majority of the disinterested members of the Board; (G) shares of any class of capital stock of the Company issued on a pro rata basis to all holders of such class as a stock dividend or upon any stock split or other subdivision of shares of capital stock; (H) shares of Common Stock issued pursuant to a bona fide public offering, or Convertible Securities or shares of Common Stock issuable upon exercise or conversion of Convertible Securities issued pursuant to a bona fide public offering, in each case with aggregate proceeds of at least $10,000,000, (I) rights issued pursuant to a stockholder rights plan, and (J) the issuance of warrants with indebtedness for purposes of yield enhancement.

(iv) "New Securities" means all Equity Securities other than Excluded Securities.

(v) "Options" means any options, warrants or other rights to subscribe for, purchase or otherwise acquire any capital stock of the Company or Convertible Securities.

(vi) "Preemptive Rights Portion" means, with respect to an Investor, the amount of New Securities that each Investor shall be entitled to purchase in the aggregate determined by *multiplying* (1) the total number of such offered shares of New Securities *by* (2) *the quotient of* (a) the aggregate number of shares of Common Stock or securities convertible or exercisable into Common Shares (whether or not presently convertible or exercisable) (on an as-converted and as-exercised basis) held by such Investor, as of such date, *divided by* (b) the aggregate number of shares of Common Stock (on an as-converted and as-exercised basis) outstanding as of such date.

5. Corporate Opportunities. The Company, on behalf of itself and its Subsidiaries (as defined in the Purchase Agreement), to the fullest extent permitted by applicable law and pursuant to resolution of the Board adopted prior to entry by the Company into the Transaction Documents and addressing the matters in this Section 5 specifically, (a) acknowledges and affirms that the Investors, the Investor Representative and their Affiliates (as defined in the Purchase Agreement), including any Appointed Director, any Observer or any other members of the Board affiliated with the Investors (the "Investor Group"): (i) have participated (directly or indirectly) and will continue to participate (directly or indirectly) in direct investments in corporations, joint ventures, limited liability companies and other entities ("Other Investments"), including Other Investments engaged in various aspects of businesses similar to those engaged in by the Company and its Subsidiaries (and related services businesses) that may, are or will be competitive with the Company's or any of its Subsidiaries' businesses or that could be suitable for the Company's or any of its Subsidiaries' interests, (ii) have done and may do business with any client, customer, vendor or lessor of any of the Company or its Affiliates or any other Person (as defined in the Purchase Agreement) with which any of the Company or its Affiliates has a business relationship, (iii) have interests in, participate with, aid and maintain seats on the board of directors or similar governing bodies of, or serve as officers of, Other Investments, (iv) may develop or become aware of business opportunities for Other Investments; and (v) may or will, as a result of or arising from the matters referenced in this Section 5, the nature of the Investor Group's businesses and other factors, have conflicts of interest or potential conflicts of interest, (b) hereby renounces and disclaims any interest or expectancy in any business opportunity (including any Other Investments or any other opportunities that may arise in connection with the circumstances described in the foregoing clauses (a)(i) through (a)(v) (each, a "Renounced Business Opportunity")), (c) acknowledges and affirms that no member of the Investor Group shall have any obligation to communicate or offer any Renounced Business Opportunity to the Company or any of its Subsidiaries, and any member of Investor Group may pursue a Renounced Business Opportunity and (d) waives any claim against the Investor Group and each member thereof in connection with the foregoing matters. The Company agrees that in the event that the Investor Group or any member thereof acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (x) the Investor Group and (y) the Company or its Subsidiaries, a member of the Investor Group shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company or its Subsidiaries unless such corporate opportunity was (x) solely learned or discovered by the Appointed Director or an Observer in his or her capacity as an Appointed Director or Observer or (y) solely learned or discovered by the Appointed Director's or the Observers' receipt of Confidential Information pursuant to the rights set forth in Section 7, but, for the avoidance of doubt, subject to Section 7(b). To the fullest extent permitted by applicable law, the Company hereby waives any claim against the Investor Group and each member thereof that such member or the Investor Group is liable to the Company or its stockholders for breach of any fiduciary duty solely by reason of the fact that the Investor Group or such member of the Investor Group (A) pursues or acquires any corporate opportunity for its own account or the account of any Affiliate or other person, (B) directs, recommends, sells, assigns or otherwise transfers such corporate opportunity to another Person or (C) does not communicate information regarding such corporate opportunity to the Company except as expressly described in the preceding sentence of this Section 5. Notwithstanding anything to the contrary in the foregoing, the Company does not renounce its interest in any corporate opportunity if such corporate opportunity was solely learned or discovered by the Appointed Director or an Observer (x) in his or her capacity as an Appointed Director or Observer of the Company or (y) such Person's receipt of Confidential Information pursuant to the rights set forth in Section 7, but, for the avoidance of doubt, subject to Section 7(b). Notwithstanding anything to the contrary in the foregoing, the Company shall not be prohibited from pursuing any Renounced Business Opportunity as a result of this Section 5.

6. Access to Information. Subject to the provisions of Section 7:

(a) For so long as there is an Appointed Director (including any Replacement Director) or any Observers on the Board, Act III Management LLC ("**Act III Management**") and its controlled Affiliates, and their respective Representatives shall be entitled to periodic meetings with senior management of the Company and reasonably requested information.

(b) The Appointed Director and any Observer may share confidential board materials he or she receives with Act III Management and its controlled Affiliates, and their respective Representatives.

Notwithstanding anything to the contrary herein but without limiting any of the Appointed Director' or Observer's rights or access to information, Act III Management and its controlled Affiliates, and their respective Representatives shall not be entitled to receive any information pursuant to this Section 6 if, upon advice of the Company's legal counsel, the Company concludes that (1) such exclusion is reasonably necessary to preserve attorney-client privilege; provided, however, that any such exclusion shall apply only to such portion of the material which would be required to preserve such privilege and not to any other portion thereof, (2) such information is subject to a binding confidentiality obligation to a third party that restricts the Company's ability to disclose it; provided that the Company uses commercially reasonable efforts to obtain any consents or waivers from the relevant third parties such that the relevant information may be disclosed or provided to Act III Management and its controlled Affiliates, and their respective Representatives, as applicable with redacted copies of documents containing such information, (3) such information would result in the disclosure of competitively sensitive information, or (4) such information would impair the ability of the Company to negotiate transactions with any of Act III Management and its controlled Affiliates, and their respective Representatives on an arms' length basis.

7. Confidentiality.

(a) The Investors will, and will direct their respective Affiliates (as defined in the Purchase Agreement) and their respective Representatives who receive Confidential Information to, keep confidential any Confidential Information and to use the Confidential Information solely for the purposes of monitoring, administering or managing the Investors' investment in the Company made pursuant to this Agreement; provided that an Investor may disclose Confidential Information (i) to its Representatives to the extent reasonably necessary to obtain their services in connection with its investment in the Company, (ii) subject to the provisions of Section 3, to any prospective purchaser of Equity Securities from such Investor (as long as such prospective purchaser is not engaged in a business that directly competes or whose products or services directly compete with the Company's and/or any of its significant subsidiaries' (as defined by Rule 1.02(w) of Regulation S-X under the 1934 Act (as defined in the Purchase Agreement)) businesses or their respective products or services) and who enters into a separate confidentiality or non-disclosure agreement or obligation with the Company on terms not more restrictive to such Person than the terms of this Section 7 with respect to the Investors, (iii) to any Affiliate, partner, member, limited partners, or related investment fund of such Investor and their respective Representatives, in each case in the ordinary course of business (provided that the recipients of such Confidential Information are directed to abide by the confidentiality and non-disclosure obligations contained herein), (iv) as may be reasonably determined by such Investor to be necessary in connection with such Investor's enforcement of its rights in connection with this Agreement or its investment in the Company, or (v) as may otherwise be required by law or legal, judicial or regulatory process; and provided, further, that (x) any breach of the confidentiality and use terms herein by any Person (as defined in the Purchase Agreement) to whom such Investor may disclose Confidential Information pursuant to clauses (i) and (iii) of the preceding proviso shall be attributable to such Investor for purposes of determining such Investor's compliance with this Section 7 and such Investor shall be liable for such breach, except those who have entered into a separate confidentiality or non-disclosure agreement or obligation with the Company and (y) that such Investor takes commercially reasonable steps (at the Company's sole expense) to minimize the extent of any required disclosure described in clause (v) of the preceding proviso.

(b) Notwithstanding the foregoing restrictions, the Company acknowledges that the Investors', Appointed Director's, Observers' and their respective Affiliates' or Representatives' knowledge of Confidential Information has inevitably enhanced the Investors', Appointed Director's, Observers' and their respective Affiliates' or Representatives' general knowledge and understanding of the business of the Company and its Subsidiaries and the industries in which the Company and its Subsidiaries operate in a way that cannot be separated from the Investors', Appointed Director's, Observers' and their respective Affiliates' or Representatives' general knowledge, and the Company agrees that the use of "mental impressions" by the Investors, Appointed Director, Observers and their respective Affiliates or Representatives shall not be restricted in connection with decisions related to other investments or business activities in such industries or any other industries as long as Confidential Information is not disclosed in breach of Section 7(a) in connection therewith. For the avoidance of doubt, a "mental impression" is what a person retains when they have not intentionally memorized the information or retained notes or other aids to help retain such memory, and, for the avoidance of doubt, the use of mental impressions shall not constitute use of the Confidential Information for purposes of this Section 7(b).

(c) For purposes of this Agreement, the following terms shall have the following meanings:

(i) "Confidential Information" means any information (including oral, written and electronic information) regarding the Company or its Subsidiaries (as defined in the Purchase Agreement) and its and their Affiliates, officers, directors and employees (whether prepared by the Company or on behalf of the Company or otherwise, and irrespective of the form or means of communication and whether it is labeled or otherwise identified as confidential) that may be furnished to the Investors or their Representatives by or on behalf of the Company at any time after the execution of the Non-Disclosure Agreement, dated December 14 2020, between Act III Management and the Company (the "Confidentiality Agreement"), that is non-public, confidential or proprietary in nature, including any analyses, compilations, forecasts, studies or other documents prepared by the Investors or their respective Affiliates or Representatives which contain, are based upon or otherwise reflect such information. "Confidential Information" shall not include such portions of the Confidential Information that (a) are or become generally available to the public other than as a result of disclosure by the Investors, their Affiliates or their Representatives in violation of this Agreement, (b) are or become available to the Investors, their Affiliates or their Representatives on a non-confidential basis from a source other than the Company or its Subsidiaries and such source is not otherwise known to the Investors, their Affiliates or their Representatives to be bound by any duty of confidentiality in respect of such information, (c) were already in the possession of the Investors, their Affiliates or their Representatives prior to the date of this Agreement and which were not obtained from, or on behalf of, the Company or its Subsidiaries or (d) are independently developed by the Investors, their Affiliates or their Representatives without use, reliance upon or reference to the Confidential Information.

(ii) "Representatives" means a Person's (as defined in the Purchase Agreement) directors, members, officers, employees, agents, consultants, accountants, attorneys or financial advisors and direct or indirect members or partners.

(d) The provisions of this Agreement shall supersede the Confidentiality Agreement. This Section 7 shall terminate 2 years from the earliest date on which Act III Management is no longer entitled to any relevant rights pursuant to Section 6.

8. Specific Performance. Each of the Investors, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other Party would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that the Investors, on the one hand, and the Company, on the other hand (in each case, the "Moving Party"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other Party will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 8 is not the exclusive remedy for any violation of this Agreement.

9. Section 16 Matters. If the Company becomes a party to a consolidation, merger or other similar transaction, or if the Company proposes to take or omit to take any other action under Section 4 (including granting to the Investors or their Affiliates (as defined in the Purchase Agreement) the right to participate in any issuance of New Securities) or otherwise or if there is any event or circumstance that may result in the Investor Group or any member thereof being deemed to have made a disposition or acquisition of Equity Securities or derivatives thereof for purposes of Section 16 of the 1934 Act (including the purchase by the Investors of any New Securities under Section 4 or any awards or grants made to the Appointed Director), and if the Appointed Director is serving on the Board at such time or has served on the Board during the preceding six (6) months (or if an Observer is serving in its capacity as such or has served in such capacity during the preceding six (6) months): (i) the Board or a committee thereof composed solely of two (2) or more "non-employee directors" as defined in Rule 16b-3 of the 1934 Act will pre-approve such acquisition or disposition of equity securities of the Company or derivatives thereof for the express purpose of exempting (to the extent permitted by law) the interests of Investor Group or any member thereof (for the Investors and/or their Affiliates, to the extent such persons may be deemed to be "directors by deputization") in such transaction from Section 16(b) of the 1934 Act pursuant to Rule 16b-3 thereunder, and (ii) if the transaction involves (A) a merger or consolidation to which the Company is a party and the Common Stock is, in whole or in part, converted into or exchanged for equity securities of a different issuer, (B) a potential acquisition or deemed acquisition, or disposition or deemed disposition, by Investor Group or any member thereof of equity securities of such other issuer or derivatives thereof and (C) an Affiliate or other designee of the Investors or their Affiliates will serve on the board of directors (or its equivalent) of such other issuer pursuant to the terms of an agreement to which the Company is a party (or if the Investors notify the Company of such service a reasonable time in advance of the closing of such transactions), then if the Company requires that the other issuer pre-approve any acquisition of equity securities or derivatives thereof for the express purpose of exempting (to the extent permitted by law) the interests of any director or officer of the Company or any of its subsidiaries in such transactions from Section 16(b) of the 1934 Act pursuant to Rule 16b-3 thereunder, the Company shall require that such other issuer pre-approve any such acquisitions of equity securities or derivatives thereof for the express purpose of exempting the interests of Investor Group or any member thereof (for the Investors and/or their Affiliates, to the extent such persons may be deemed to be "directors by deputization" of such other issuer) in such transactions from Section 16(b) of the 1934 Act pursuant to Rule 16b-3 thereunder.

10. Securities Laws. Each Investor acknowledges that it is aware, and will advise each of its Representatives who are informed as to the matters that are the subject of this Agreement, that the United States securities laws may prohibit any person who directly or indirectly has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

11. Miscellaneous.

(a) Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the Borough of Manhattan in the City of New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Each Party irrevocably consents to service of process in the manner provided for notices in Section 11(f). Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each Party and delivered to the other Parties; provided that a facsimile or .pdf signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the Parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the Parties or the practical realization of the benefits that would otherwise be conferred upon the Parties. The Parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(e) Entire Agreement; Amendment and Waiver. This Agreement and the other Transaction Documents (as defined in the Purchase Agreement) supersede all other prior or contemporaneous agreements and understandings, both written and oral, between the Buyer (as defined in the Purchase Agreement), the Company, their Affiliates (as defined in the Purchase Agreement) and Persons (as defined in the Purchase Agreement) acting on their behalf with respect to the subject matter hereof and thereof, and this Agreement, the other Transaction Documents , and the instruments referenced herein and therein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof and, except as specifically set forth herein or therein, neither the Company nor the Buyer makes any representation, warranty, covenant or undertaking with respect to any such matters. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investor Representative. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law. Any amendment or waiver effected in accordance with this Section 11(e) shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the Investors. Notwithstanding the foregoing, any Affiliate of Buyer (as defined in the Purchase Agreement) to whom there is a Transfer (as defined in the Purchase Agreement) of Securities shall have the right to become party to this Agreement as an Investor pursuant to a joinder to this Agreement.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail, in each case properly addressed to the party to receive the same; or (iii) one Business Day after deposit with an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier); provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one business day after e-mail by dispatch pursuant to the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Cathy King
E-mail: cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to Act III:

PAR Act III, LLC
23 Prescott St.
Brookline, MA 02446
Attention: Ronald M. Shaich
E-mail: ronshaich@act3holdings.com

with a copy to (for informational purposes only):

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matthew B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

if to the Investor Representative:

Ronald M. Shaich
23 Prescott St.
Brookline, MA 02446
E-mail: ronshaich@act3holdings.com

with a copy to (for informational purposes only):

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matthew B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

If to an Investor, to its address and e-mail address set forth on the Schedule of Investors attached hereto, with copies to such Investor's Representatives as set forth on such Schedule of Investors, with a copy (for informational purposes only) to:

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matthew B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient Party has specified by written notice given to each other Party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i) or (ii) above, respectively.

(g) Successors and Assigns. The terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors, heirs, and permitted assigns. No Party shall assign this Agreement or any rights or obligations hereunder without, with respect to any Investor, the prior written consent of the Company, except to an Affiliate of Buyer, and with respect to the Company, the prior written consent of the Investor Representative.

(h) No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties and their respective successors, heirs and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(i) Interpretation; Absence of Presumption.

(i) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated.

(ii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(iii) The words “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement.

(iv) Unless otherwise specified in this Agreement, the term “dollars” and the symbol “$” mean U.S. dollars for purposes of this Agreement and all amounts in this Agreement shall be paid in U.S. dollars.

(v) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(vi) Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes.

(vii) Each of the Parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized signatories of the Parties as of the date hereof.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh

Name: Savneet Singh
Title: President and Chief Executive Officer

[*Signature Page to the Investor Rights Agreement*]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized signatories of the Parties as of the date hereof.

PAR Act III, LLC

By: /s/ Ronald M. Shaich

Name: Ronald M. Shaich
Title: Chief Executive Officer

[*Signature Page to the Investor Rights Agreement*]

Exhibit 10.7

Execution Version

THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS AND MAY BE OFFERED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, TRANSFERRED OR OTHERWISE DISPOSED OF (EACH, A "TRANSFER") ONLY IF SUCH SECURITIES ARE REGISTERED UNDER THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR IF SUCH TRANSFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS AFTER PROVIDING AN OPINION OF COUNSEL TO SUCH EFFECT.

COMMON STOCK PURCHASE WARRANT

PAR TECHNOLOGY CORPORATION

Warrant Shares: 500,000 Initial Issuance Date: April 8, 2021

THIS COMMON STOCK PURCHASE WARRANT (this "***Warrant***") certifies that, for value received, **PAR Act III, LLC** or its assigns (the "***Holder***") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, on or prior to the Close of Business on April 8, 2026 (the "***Termination Date***") but not thereafter, to subscribe for and purchase from PAR Technology Corporation, a Delaware corporation (the "***Company***"), up to 500,000 duly authorized, validly issued, fully paid and nonassessable shares of Common Stock (as subject to adjustment hereunder, the "***Warrant Shares***"). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price (as defined in Section 2(b)).

1. Definitions. Capitalized terms used and not otherwise defined in this Warrant that are defined in the Purchase Agreement (as defined below) shall have the respective meanings ascribed to such terms in the Purchase Agreement. As used in this Warrant, the following terms shall have the respective meanings set forth in this Section 1:

(a) "***2021 Stockholder Meeting***" means the Company's 2021 annual meeting of stockholders (including at any postponement, recess or adjournment thereof).

(b) "***Aggregate Exercise Price***" means an amount equal to the product of (i) the number of Warrant Shares in respect of which this Warrant is then being exercised pursuant to Section 2, multiplied by (ii) the Exercise Price in effect as of the Exercise Date in accordance with the terms of this Warrant; *provided* that for the purposes of Section 3(a), "***Aggregate Exercise Price***" shall mean an amount equal to the product of (x) the total number of Warrant Shares initially issuable pursuant to this Warrant (as adjusted pursuant to Section 3(a)) multiplied by (y) the Exercise Price in effect as of the date of the applicable adjustment pursuant to Section 3(a).

(c) "***Business Day***" means a day that is a Monday, Tuesday, Wednesday, Thursday or Friday and is not a day on which banking institutions in New York, New York generally are authorized or obligated by law, regulation or executive order to close.

(d) "***Cashless Exercise Date***" has the meaning set forth in Section 2(c).

(e) "***Change of Control***" means, at any time, the occurrence of any of the following events or circumstances: (i) any "person" or "group" (within the meaning of Section 13(d) or 14(d) of the 1934 Act) shall (A) become the "beneficial owner" (within the meaning of Section 13(d) of the 1934 Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities or (B) otherwise acquire, directly or indirectly, the power to direct or cause the direction of the management or policies of the Company, whether through the ability to exercise voting power, by contract or otherwise, (ii) persons who (A) were directors of the Company on the date hereof (the "Incumbent Directors") or (B) became a director on or subsequent to the date hereof whose election or nomination for election was approved by a majority of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the relevant party in which such person is named as a nominee for director, without written objection to such nomination), which such person shall thereinafter be an Incumbent Director, shall cease to occupy a majority of the seats (excluding vacant seats) on the Board, (iii) the consummation of a merger or consolidation of the Company with or into any other Person, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent at least 50% of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation or (iv) any direct or indirect sale, transfer or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole (it being agreed that the sale, transfer or other disposition by any Person of the Equity Interests of any Subsidiary constitutes an indirect sale, transfer or disposition of the assets of such Subsidiary). A transaction shall not constitute a Change of Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in the same proportions by the persons who held the Company's securities immediately before such transaction.

(f) "***Close of Business***" means 5:00 p.m., eastern time, on any Business Day.

(g) "***Closing Price***" means, for any date, the price determined by the first of the following clauses that applies: (i) if the Common Stock is then listed or quoted on a Trading Market, the last reported closing price of the Common Stock for such date on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P., (ii) if the Common Stock is not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported or (iii) in all other cases, the fair market value of a share of Common Stock as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Company and reasonably acceptable to the Holder, the fees and expenses of which shall be paid by the Company.

(h) "***Commission***" means the United States Securities and Exchange Commission.

(i) "***Common Stock***" means the common stock, par value $0.02 per share, of the Company.

(j) "***Company***" has the meaning set forth in the Preamble.

(k) "***Conversion Cap***" has the meaning set forth in the definition of Excess Warrant Shares.

(l) "***DWAC***" has the meaning set forth in Section 2(d).

(m) "***Equity Interests***" means any and all shares, interests, participations or other equivalents (however designated) of equity interests of a corporation, any and all equivalent ownership interests in a Person other than a corporation (including, without limitation, partnership interests, membership interests and similar ownership interests), any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing, and all other ownership or profit interests in a Person (including partnership, member or trusts interests in such Person), in each case whether voting or non-voting and whether or not outstanding on any date of determination.

(n) "***Excess Warrant Shares***" means in the case that the number of Warrant Shares and the shares of Common Stock issuable by the Company pursuant to the Prism Acquisition Transaction, the Purchase Agreement and the TRowe Purchase Agreement, in the aggregate, is more than 19.9% of the number of shares of Common Stock outstanding immediately prior to the Initial Issuance Date (the "***Conversion Cap***"), the Warrant Shares that that are in excess of the Conversion Cap (rounded up to the nearest whole share).

(o) "***Exercise Date***" has the meaning set forth in Section 2(a).

(p) "***Excluded Issuance***" means any issuance or sale by the Company after the Initial Issuance Date of: (i) any securities issued by the Company as full or partial consideration in connection with a *bona fide* merger, acquisition, consolidation, business combination, purchase of the capital stock or assets of, or transaction or series of transactions with, an unaffiliated third-party that is the result of arm's length negotiations, including, for the avoidance of doubt, any shares of Common Stock issued by the Company as consideration pursuant to the Prism Merger Agreement; (ii) any shares of Common Stock or options to purchase shares of Common Stock, or other equity-based awards (including restricted stock units), issued or granted to existing or former employees (or prospective employees who have accepted an offer of employment), directors or consultants (in each case, as defined in the Company's equity incentive plans) of the Company or any of its Subsidiaries pursuant to Company equity incentive plans, including the Company's equity incentive plans existing on the date hereof and any future equity incentive plan, as such plans may be amended or supplemented, in each case, that have been approved by the full Board or a majority of the independent members of the Board and requisite vote of the Company's stockholders, as applicable (in each case, including with respect to any amendment or supplement thereof) or that exist as of the Initial Issuance Date, including, for the avoidance of doubt, any shares of Common Stock issuable upon exercise of any such option or settlement or vesting of any equity-based award issued under such plans; (iii) any shares of capital stock issuable upon exercise of any option of Prism assumed by the Company pursuant to the Prism Merger Agreement; (iv) any securities issued pursuant to any employee stock purchase plan approved by the Board and the Company's stockholders, as applicable; (v) securities issued by the Company upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock, including the Warrant Shares and shares of Common Stock issuable upon conversion of the Convertible Notes, and are outstanding prior to the Initial Issuance Date, provided that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Initial Issuance Date, (vi) securities issued pursuant to a *bona fide* public offering at a price that, (A) in the case of Common Stock, is, or, (B) in the case of any other security, implies a price per share of the Common Stock of, no less than 95% of the VWAP immediately prior to such issuance or sale or (vii) any New Securities (as defined in the Investor Rights Agreement) with respect to which the Investors (as defined in the Investor Rights Agreement) had exercised preemptive rights under the Investors Rights Agreement.

(q) "***Exercise Price***" has the meaning set forth in Section 2(b).

(r) "***Holder***" has the meaning set forth in the Preamble.

(s) "***Initial Issuance Date***" means April 8, 2021.

(t) "***Investor Rights Agreement***" means the Investor Rights Agreement dated as of April 8, 2021, by and among the Company, the Holder and any transferees of the Securities who agree to become subject to the Investor Rights Agreement.

(u) "***Moving Party***" has the meaning set forth in Section 5(g).

(v) "***Notice of Exercise***" has the meaning set forth in Section 2(a).

(w) "***Person***" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(x) "***Purchase Agreement***" means the Securities Purchase Agreement, dated as of April 8, 2021, by and between the Company and the Holder.

(y) "***Registration Rights Agreement***" means the Registration Rights Agreement, dated as of April 8, 2021, by and among the Company, and the Investors (as defined in the Registration Rights Agreement).

(z) "***Required Stockholder Approval***" means any approval by the stockholders of the Company necessary for the issuance of the Excess Warrant Shares issuable upon the exercise of the Holder's rights under this Warrant.

(aa) "***Termination Date***" has the meaning set forth in the Preamble.

(bb) "***Trading Day***" means a day on which the Common Stock is traded on a Trading Market or, if the Common Stock is not traded on a Trading Market, then on the principal securities exchange or securities market on which the Common Stock is then traded.

(cc) "***Trading Market***" means any market or exchange of the New York Stock Exchange or the Nasdaq Stock Market LLC.

(dd) "***Transfer Agent***" has the meaning set forth in Section 2(d).

(ee) "***TRowe Purchase Agreement***" means the Securities Purchase Agreement, dated as of the date hereof, among the Company and those certain funds and accounts advised by T. Rowe Price Associates, Inc., acting as investment adviser.

(ff) "***VWAP***" means, for any date, the price determined by the first of the following clauses that applies: (i) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (ii) if the Common Stock is not then listed on a Trading Market or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported or (iii) in all other cases, the fair market value of a share of Common Stock as determined by an independent nationally recognized investment banking, accounting or valuation firm selected in good faith by the Company and reasonably acceptable to the Holder, the fees and expenses of which shall be paid by the Company.

(gg) "***Warrant***" has the meaning set forth in the Preamble.

(hh) "***Warrant Register***" has the meaning set forth in Section 6(c).

(ii) "***Warrant Share Delivery Date***" has the meaning set forth in Section 2(d).

(jj) "***Warrant Shares***" has the meaning set forth in the Preamble.

2. Exercise.

(a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or before the Termination Date by delivery in accordance with the notice provisions of Section 7(f) (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed Notice of Exercise Form annexed hereto (each, a "***Notice of Exercise***"); provided that purchase rights represented by this Warrant with respect to any Excess Warrant Shares (1) shall be exercisable for Warrant Shares only following receipt of the Required Stockholder Approval and, (2) shall only be exercisable for cash in accordance with Section 5 prior to the receipt of the Required Stockholder Approval (and such exercise for cash may only occur beginning on the earlier of (i) the conclusion of the 2021 Stockholder Meeting or (ii) immediately upon any public announcement of a negotiated Change of Control). For the avoidance of doubt, other than as provided in clause (ii) in the foregoing sentence, the purchase rights represented by this Warrant with respect to the Excess Warrant Shares shall not be exercisable prior to the 2021 Stockholder Meeting. Unless the purchase rights represented by this Warrant are being exercised on a cashless basis in accordance with Section 2(c) or, with respect to the Excess Warrant Shares, for cash in accordance with Section 5, within three Trading Days following the date of exercise as aforesaid, the Holder shall deliver the Aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank (such date of delivery of the Aggregate Exercise Price, the "***Exercise Date***"). Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and this Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall inform the Holder if a Notice of Exercise has not been duly completed within one Business Day of receipt of such notice, but shall not refuse or object to the issuance of the Warrant Shares upon receipt of, and pursuant to, a duly completed Notice of Exercise. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be $76.50, subject to adjustment hereunder (the "***Exercise Price***").

(c) Cashless Exercise. The Holder, at its option, may exercise this Warrant, in whole or in part, by means of a "cashless exercise" in which the Holder shall be entitled, provided that the "cashless exercise" pursuant to this Section 2(c) with respect to any Excess Warrant Shares may only be exercised following receipt of the Required Shareholder Approval or, at any time, in accordance with Section 5, to receive the number of Warrant Shares equal to the quotient obtained by dividing [(Y)*(A-B)] by (A), where:

(A) = the average of the Closing Price of the shares of Common Stock for the five consecutive Trading Days ending on the last Trading Day immediately preceding the date on which the Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise (such date, the "***Cashless Exercise Date***");

(B) = the Exercise Price of this Warrant, as adjusted pursuant to this Warrant as of the Cashless Exercise Date; and

(Y) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise pursuant to Section 2(a) rather than a cashless exercise.

(d) Mechanics of Exercise.

(i) *Delivery of Warrant Shares Upon Exercise*. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Company's transfer agent (the "***Transfer Agent***") to the Holder by, at the Holder's option, (A) crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("***DWAC***") if the Company is then a participant in such system and there is an effective registration statement permitting the resale of the Warrant Shares by the Holder or (B) in book-entry form registered on the books of the Transfer Agent or, upon request by the Holder, by physical delivery of a certificate (or certificates, as applicable) to the address specified by the Holder in the Notice of Exercise, in each case in the name of the Holder or its designee and for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise, by the date that is three Trading Days after the latest of (1) the delivery to the Company of the Notice of Exercise, (2) surrender of this Warrant (if required), (3) payment of the Aggregate Exercise Price as set forth above and (4) three Trading Days following the Cashless Exercise Date, if applicable (such date in (1), (2), (3) or (4), the "***Warrant Share Delivery Date***"). The applicable Warrant Shares shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the applicable Exercise Date or the date that is three Trading Days following the Cashless Exercise Date, as applicable.

(ii) *Delivery of New Warrants Upon Exercise*. If this Warrant shall have been exercised in part, the Company shall, at the request of the Holder and upon surrender of this Warrant, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) *Rescission Rights*. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder shall have the right to rescind such exercise. Any rescission by the Holder pursuant to this Section 2(d)(iii) shall not affect any other remedies available to the Holder under applicable law or equity as a result of the Company's failure to timely deliver the Warrant Shares.

(iv) *No Fractional Shares*. No fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a Warrant Share that the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at the Holder's election, either (A) pay to such Holder an amount in cash (by delivery of a certified or official bank check or by wire transfer of immediately available funds) equal to the product of (1) such fraction multiplied by (2) the Closing Price of one Warrant Share on the Exercise Date or the Cashless Exercise Date, as applicable, or (B) round up to the next whole share.

(v) *Closing of Books*. The Company shall not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant pursuant to the terms hereof.

(e) Conditional Exercise. Notwithstanding any other provision hereof, if an exercise of any portion of this Warrant is to be made in connection with a public offering or a sale of the Company (pursuant to a merger, sale of stock, or otherwise), such exercise may, at the election of the Holder (set forth in the applicable Notice of Exercise), be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

(f) Representations, Warranties and Covenants of the Company. The Company hereby represents, covenants and agrees, as applicable, except as (A) disclosed (to the extent that the relevance of any such disclosure with respect to any section of this Warrant is reasonably apparent on its face) in SEC Documents filed or furnished after December 31, 2019 and prior to the date hereof (other than disclosure contained in the "Risk Factors" or "Forward Looking Statements" sections of such SEC Documents or any other sections to the extent such disclosures are similarly predictive or forward-looking in nature), or (B) set forth in the Company Disclosure Letter (it being understood that any information, item or matter set forth on one section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to, and shall be deemed to apply to and qualify, the section or subsection of this Warrant to which it corresponds in number and each other section or subsection of this Warrant to the extent that it is reasonably apparent on its face that such information, item or matter is relevant to such other section or subsection):

(i) The Company (i) has been duly organized or formed, as the case may be, is validly existing and is in good standing under the laws of the State of Delaware, (ii) has all requisite power and authority to own its properties and to carry on its business as now being conducted and as presently proposed to be conducted (iii) is duly qualified or licensed to do business and is in good standing as a foreign corporation, partnership or other entity as the case may be, authorized to do business in each jurisdiction in which the nature of such businesses or the ownership or leasing of such properties requires such qualification, except, in each case, where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) The issuance of this Warrant and any Warrant in substitution for or replacement of this Warrant (including pursuant to Section 2(d)(ii)) has been duly authorized and, upon issuance in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof. The issuance of the Warrant Shares has been duly authorized and, upon (A) receipt of the Required Stockholder Approval with respect to the Excess Warrant Shares, (B) the issuance of the Warrant Shares in accordance with the exercise of the Holder's rights under this Warrant and (C) payment of the consideration required upon exercise pursuant to this Warrant (including by means of cashless exercise pursuant to Section 2(c)), the Warrant Shares will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights (except as set forth in the Investor Rights Agreement), taxes, Liens and charges with respect to the issue thereof, with the Holders being entitled to all rights accorded to a holder of Common Stock. Assuming in part the accuracy of each of the representations and warranties of the Holder set forth in Section 2(g) of this Warrant, the offer and issuance by the Company of this Warrant is exempt from registration under the 1933 Act.

(iii) This Warrant and any Warrant in substitution for or replacement of this Warrant (including pursuant to Section 2(d)(ii)) is and shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be subject to (A) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to applicable creditors' rights generally and (B) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(iv) Neither the execution, delivery or performance of this Warrant nor the consummation of any of the transactions contemplated hereby conflicts or will conflict with, violate, constitute a breach of or a default (with notice or lapse of time or otherwise) or a Debt Repayment Triggering Event under, or result in the imposition of a Lien on any assets of the Company, the imposition of any penalty or a Debt Repayment Triggering Event under or pursuant to (A) the Charter Documents, (B) any Applicable Agreement, (C) any Applicable Law or (D) any order, writ, judgment, injunction, decree, determination or award binding upon or affecting the Company, except in the case of clauses (B) and (C) for such conflicts, violations, breaches, defaults or events that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) The Company covenants that during the period this Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights represented by this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and subject to the receipt of the Required Stockholder Approval with respect to the issuance of any Excess Warrant Shares, issue certificates, if necessary, for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such action as may be necessary or appropriate to assure that the Warrant Shares may be issued as provided herein without violation of any applicable law, regulation or any requirements of the Trading Market upon which the Common Stock may be listed or any preemptive or similar rights (except as set forth in the Investor Rights Agreement) of any equity holder of the Company; provided that the Company's obligations in the foregoing sentence with respect to the issuance of Excess Warrant Shares shall be subject to the receipt of the Required Stockholder Approval but, for the avoidance of doubt, such obligations include the Company's obligations with respect to obtaining the Required Stockholder Approval in accordance with Section 4.

(vi) Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, through an amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (A) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (B) subject to receipt of the Required Stockholder Approval with respect to the Excess Warrant Shares, take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (C) use its reasonable best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be necessary to enable the Company to perform its obligations under this Warrant.

(vii) Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(g) Representations and Warranties of the Holder. The Holder, by the acceptance hereof, represents and warrants that it is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D and that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the 1933 Act.

3. Certain Adjustments. In order to prevent dilution of the purchase rights granted under this Warrant, the Exercise Price and the number of Warrant Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this Section 3 (in each case, after taking into consideration any prior adjustments pursuant to this Section 3).

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides (by any stock split, recapitalization or otherwise) outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to (A) the record date for the determination of stockholders entitled to receive such dividend or distribution or (B) the effective date in the case of a subdivision, combination or re-classification, as applicable, by a fraction the numerator of which shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the Aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security, then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction the numerator of which shall be such VWAP on such record date less the then fair market value (as determined by the Board in good faith) at such record date of the portion of such assets or evidence of indebtedness so distributed applicable to one outstanding share of Common Stock, and the denominator of which shall be the VWAP determined as of the record date mentioned above. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

(c) Issuance Less Than Fair Market Value.

i. Except as provided in Section 3(e) and except in the case of an event described in either Section 3(a) or Section 3(b), if the Company shall, at any time or from time to time after the Initial Issuance Date, issue or sell any shares of Common Stock without consideration or for consideration per share less than the VWAP immediately prior to such issuance or sale, then immediately upon such issuance or sale, the Exercise Price in effect immediately prior to such issuance or sale shall be reduced (and in no event increased) to an Exercise Price equal to a product obtained by multiplying the Exercise Price in effect immediately prior to such issuance or sale, by a fraction (which shall in no event be more than one):

(1) the numerator of which shall be the sum of (A) the product obtained by *multiplying* the Common Stock deemed outstanding immediately prior to such issuance or sale by the VWAP immediately prior to such issuance or sale *plus* (B) the aggregate consideration, if any, received by the Company upon such issuance or sale; and

(2) the denominator of which shall be the product obtained by multiplying (A) the Common Stock outstanding immediately after such issuance or sale by (B) the VWAP immediately prior to such issuance or sale.

ii. Upon any and each adjustment of the Exercise Price as provided in Section 3(c)(i), the number of Warrant Shares issuable upon the exercise of this Warrant immediately prior to any such adjustment shall be increased to a number of Warrant Shares equal to the quotient obtained by dividing:

(1) the product of (x) the Exercise Price in effect immediately prior to any such adjustment *multiplied by* (y) the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to any such adjustment; by

(2) the Exercise Price resulting from such adjustment.

(d) Certain Events. If any event of the type contemplated by the provisions of this Section 3 but not expressly provided for by such provisions occurs, then the Board shall make an appropriate adjustment in the Exercise Price and the number of Warrant Shares issuable upon exercise of this Warrant so as to protect the rights of the Holder in a manner consistent with the provisions of this Section 3; *provided*, that no such adjustment pursuant to this Section 3(d) shall increase the Exercise Price or decrease the number of Warrant Shares issuable except as otherwise determined pursuant to this Section 3.

(e) Excluded Issuance. Anything herein to the contrary notwithstanding, there shall be no adjustment to the Exercise Price or the number of Warrant Shares issuable upon exercise of this Warrant with respect to any Excluded Issuance.

(f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock issued and outstanding.

(g) Notice to the Holder.

(i) *Adjustment to Exercise Price*. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly compute such adjustment, in good faith, in accordance with the terms of this Warrant, and prepare a certificate setting forth such adjustment, including (A) a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), (B) in the case of adjustment pursuant to Section 3(b), a statement of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock, and setting forth a brief statement of the facts requiring such adjustment and certifying the calculation thereof and the VWAP as of the applicable record date and (C) in the case of adjustment pursuant to Section 3(c), a statement of the material terms of the issuance of Common Stock, including (w) the per share consideration of such issuance, (x) the total amount received or receivable by the Company as consideration for such issuance, (y) the date of such issuance and (z) the VWAP immediately prior to such issuance. The Company will deliver a copy of each such certificate to the Holder as promptly as reasonably practicable following any adjustment of the Exercise Price, but in any event not later than ten Business Days thereafter.

(ii) *Notice to Allow Exercise by the Holder*. If the Company (A) declares a dividend (or any other distribution in whatever form) on the Common Stock, (B) declares a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) authorizes the granting to all holders of the Common Stock or rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights of the Company, (D) enters into or becomes bound by an agreement in connection with a Change of Control or (E) authorizes the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register (as defined in Section 6(c)) of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distribution, redemption, rights or warrants are to be determined or (y) the date on which such Change of Control is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such Change of Control; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein. Except as otherwise prohibited by Applicable Laws, to the extent that any notice provided pursuant to this Section 3(g)(ii) contains material, non-public information regarding the Company, the Company shall disclose such information regarding the Company in a Current Report on Form 8-K and file such Current Report on Form 8-K with the Commission as promptly as practicable, but in no event no later than the second Trading Day following the effective date of the event triggering such notice.

(h) In the event of any (i) capital reorganization of the Company, (ii) reclassification of the stock of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) Change of Control or (iv) other similar transaction (other than any such transaction covered by Section 3(a) or Section 3(b)) in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Warrant that is not exercised prior to such event shall, immediately after such reorganization, reclassification, Change of Control or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Warrant Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification, Change of Control or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification, Change of Control or similar transaction and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant and, with respect to the Excess Warrant Shares, assuming for this purpose that the Company has obtained the Required Stockholder Approval); and, in such case, appropriate adjustment shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Section 3 shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant (including, in the case of any Change of Control or similar transaction in which the successor or purchasing Person is other than the Company, an immediate adjustment in the Exercise Price to the value per share for the Common Stock reflected by the terms of such Change of Control or similar transaction, and a corresponding immediate adjustment to the number of Warrant Shares acquirable upon exercise of this Warrant without regard to any limitations or restrictions on exercise and, with respect to the Excess Warrant Shares, assuming for this purpose that the Company has obtained the Required Stockholder Approval, if the value so reflected is less than the Exercise Price in effect immediately prior to such Change of Control or similar transaction); provided, that if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such reorganization, reclassification, Change of Control or similar transaction, then each Warrant that is not exercised prior to such event shall be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which a holder of Common Stock would have been entitled upon such reorganization, reclassification, Change of Control or similar transaction if such holder of Common Stock had failed to make an election. The provisions of this Section 3(h) shall similarly apply to successive Change of Control or similar transactions. Prior to the consummation thereof, the successor Person (if other than the Company) resulting from such Change of Control or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Warrant, the obligation to deliver to the Holder such shares of stock, securities or assets which, in accordance with the foregoing provisions, such Holder shall be entitled to receive upon exercise of this Warrant. Without limiting the generality of Section 2(f)(iv), the Company will use its reasonable best efforts to obtain all such authorizations, exemptions or consents and take all actions as may be necessary to effectuate the foregoing.

4. Covenant to Seek the Required Stockholder Approval. The Company shall use its reasonable best efforts to obtain, at the 2021 Stockholder Meeting, the Required Stockholder Approval, including by endorsing its approval in the related proxy materials or communications ("***Proxy Materials***"). The Company will promptly notify the Holder if the Required Stockholder Approval is or is not obtained. In the case that the Required Stockholder Approval is not obtained at the 2021 Stockholder Meeting, the Company shall, upon the written request of the Holder or Holders holding the Warrant or Warrants representing the right to purchase a majority of the Warrant Shares, hold a meeting of its stockholders within one hundred twenty (120) days following such request and use its reasonable best efforts to obtain the Required Stockholder Approval; provided that the Holder(s) may not request such stockholder meeting more than once within any 90-day period or more than three times in total following the 2021 Stockholder Meeting. With respect to any Proxy Materials delivered or otherwise made available to the Company's stockholders in connection with the foregoing, the Company shall provide the Holder and its outside legal counsel with a reasonable opportunity to review and comment on drafts of such Proxy Materials prior to filing, furnishing or delivering such Proxy Materials to the applicable Governmental Authority and their dissemination to the Company's stockholders and incorporate in such Proxy Materials all comments reasonably proposed by Holder or its outside legal counsel. The Company agrees that all information relating to the Holder, its Affiliates and its and their respective Representatives included in the Proxy Materials shall be in form and content reasonably satisfactory to the Holder.

5. Conversion of Warrant. Notwithstanding anything herein to the contrary, prior to the Required Stockholder Approval being obtained upon delivery of a Notice of Exercise by the Holder with respect to any Excess Warrant Shares (provided that such Notice of Exercise may only be delivered beginning on the earlier of (1) the conclusion of the 2021 Stockholder Meeting or (2) immediately upon any public announcement of a negotiated Change of Control), in lieu of issuing and delivering such Excess Warrant Shares to the Holder, the Company shall pay cash to the Holder in exchange for the cancellation of such portion of this Warrant exercisable into such Excess Warrant Shares set forth in the Notice of Exercise (the "**Excess Payment Amount**") at an amount equal to (Y)*(A-B), where:

(A) = the average of the Closing Price of the shares of Common Stock for the five consecutive Trading Days ending on the last Trading Day immediately preceding the date on which the Holder elects to exercise this Warrant with respect to such Excess Warrant Shares, as set forth in the applicable Notice of Exercise (such date, the "**Excess Payment Exercise Date**");

(B) = the Exercise Price of this Warrant, as adjusted pursuant to the Warrant as of the Excess Payment Exercise Date; and

(Y) = the number of Excess Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise pursuant to Section 2(a) rather than pursuant to this Section 5.

Payment by the Company of the cash payment pursuant to this Section 5 shall be made by the Company as promptly as practicable, but in no event later than the date that is ten Trading Days after the latest of (1) the delivery to the Company of the applicable Notice of Exercise, (2) surrender of this Warrant (if required), and (3) three Trading Days following the Excess Payment Exercise Date.

6. Transfer of Warrant.

(a) Transferability. Subject to applicable securities laws, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. This Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued. For the avoidance of doubt, nothing in any of the existing agreements or any other arrangements involving the Company and the Holder or any of their respective Affiliates (contractual or otherwise) shall be construed as limiting the Holder's or any of its Affiliates' or assigns' ability to transfer or exercise this Warrant or transfer any of the Warrant Shares, except that the Holder agrees that it shall not, directly or indirectly, whether by merger, consolidation, division or otherwise, and whether by or through one or more Affiliates, transfer, sell, assign, pledge, hypothecate or otherwise dispose of the Warrant to any Person who is engaged in a business that directly competes or whose products or services directly compete the Company's and/or any of its significant subsidiaries' (as defined by Rule 1.02(w) of Regulation S-X under the 1934 Act) businesses or their respective products or services.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice (and the old Warrant or Warrants shall promptly be cancelled); provided, that the aggregate number of Warrant Shares to be issued upon exercise of the Warrant and any Warrants issued pursuant to this Section 4(b), in aggregate, shall not exceed 500,000, as adjusted in accordance with the terms herein. All Warrants issued on transfers or exchanges shall be dated the Initial Issuance Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "***Warrant Register***"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

7. Miscellaneous.

(a) No Rights as Stockholders Until Exercise. Except as provided in Section 3, this Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d).

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of this Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company shall make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein is not a Business Day, such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Governing Law; Jurisdiction.

(i) *Governing Law*. This Warrant and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Warrant and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

(ii) *Jurisdiction*. Each party hereto irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto in any way relating to this Warrant or the transactions relating hereto, in any forum other than the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York, and any appellate court from any thereof; and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(iii) *Waiver of Venue*. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Warrant in any court referred to in paragraph (ii) of this Section 7(d). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(iv) *Service of Process*. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7(f).

(e) Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(E).

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Warrant shall be in writing and shall be deemed to be delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail, in each case properly addressed to the party to receive the same; or (iii) one Business Day after deposit with an overnight courier service (provided e-mail notice is sent that such communication was sent by overnight courier); provided that any electronic mail transmission is promptly confirmed by a responsive electronic communication by the recipient thereof or receipt is otherwise clearly evidenced (excluding out-of-office replies or other automatically generated responses) or is followed up within one Business Day after e-mail by dispatch pursuant to the foregoing clause (i). The addresses and e-mail addresses for such communications shall be:

if to the Company:

PAR Technology Corporation
8383 Seneca Turnpike
New Hartford, New York 13413
Attention: Bryan Menar
Cathy King
E-mail: bryan_menar@partech.com
cathy_king@partech.com

with a copy to (for informational purposes only):

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Boris Dolgonos
Eduardo Gallardo
E-mail: bdolgonos@gibsondunn.com
egallardo@gibsondunn.com

if to the Holder:

PAR Act III, LLC
23 Prescott St.
Brookline, MA 02446
Attention: Ron Shaich
E-mail: ronshaich@act3holdings.com

with a copy to (for informational purposes only):

Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004
Attention: Audra D. Cohen
Matthew B. Goodman
E-mail: cohena@sullcrom.com
goodmanm@sullcrom.com

or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date, and recipient e-mail address, or (C) given by the recipient where notice was provided by an overnight courier service (provided e-mail notice is sent stating that such communication was sent by overnight courier) shall be rebuttable evidence of personal service or receipt by e-mail in accordance with clause (i) or (ii) above, respectively.

(g) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(h) Remedies. Each of the Holder, on the one hand, and the Company, on the other hand, acknowledges and agrees that irreparable injury to the other party hereto would occur in the event any of the provisions of this Warrant were not performed in accordance with their specific terms or were otherwise breached and that such injury would not be adequately compensable by the remedies available at law (including the payment of money damages). It is accordingly agreed that the Holder, on the one hand, and the Company, on the other hand (in each case, the "Moving Party"), shall each be entitled to specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, and the other party hereto will not take action, directly or indirectly, in opposition to the Moving Party seeking such relief on the grounds that any other remedy or relief is available at law or in equity. This Section 7(h) is not the exclusive remedy for any violation of this Warrant.

(i) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall be binding upon and inure to the benefit of the parties hereto and their respective the successors, heirs and permitted assigns. The provisions of this Warrant are intended to be for the benefit of the Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares. For the avoidance of doubt, that in the event that any Person acquires this Warrant or any Warrant Shares, such Person shall, without any further writing or action of any kind, be deemed a beneficiary hereof for all purposes and by taking and holding such Warrant or Warrant Shares, as applicable, such Person shall be treated as a "Holder" for all purposes under this Warrant and shall be entitled to receive the benefits of, and be conclusively deemed to have agreed to be bound by all of the applicable terms and provisions of, this Warrant.

(j) No Third Party Beneficiary. Notwithstanding anything herein to the contrary, this Warrant is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(k) Entire Agreement. This Warrant supersedes all other prior or contemporaneous agreements and understandings, both written and oral, between the Company, the Holder, their Affiliates and Persons acting on their behalf with respect to the subject matter hereof, and this Warrant and the instruments referenced herein constitute the full and entire agreement and understanding of the parties with respect to the subject matters hereof and thereof, and, except as specifically set forth herein or therein, neither the Company nor the Holder makes any representation, warranty, covenant or undertaking with respect to any such matters.

(l) Amendments and Waivers. Provisions of this Warrant may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only if such amendment or waiver is in writing and signed, in the case of an amendment, by the Company and the Holder, and, in the case of a waiver, by the party against whom the waiver is to be effective. Any amendment or waiver effected in accordance with this Section 7(l) shall be binding upon the Holder (and each future Holder) and the Company.

(m) Counterparts. This Warrant may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; *provided* that a facsimile or .pdf format signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or .pdf signature.

(n) Severability. If any provision of this Warrant is prohibited by law or otherwise becomes or is declared by a court of competent jurisdiction to be invalid or unenforceable, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties hereto will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(o) Headings; Interpretation. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant. When a reference is made in this Warrant to a Section, Schedule or Annex, such reference shall be to a Section, Schedule or Annex of this Warrant unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Warrant, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Warrant as a whole (including all of the Schedules and Annexes) and not to any particular provision of this Warrant. Unless otherwise specified in this Warrant, the term "dollars" and the symbol "$" mean U.S. dollars for purposes of this Warrant and all amounts in this Warrant shall be paid in U.S. dollars. The definitions contained in this Warrant are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute, rule or regulation defined or referred to in this Warrant means such agreement, instrument or statute, rule or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes. Any reference to any section under the 1933 Act, or any rule promulgated thereunder, shall include any publicly available interpretive releases, policy statements, staff accounting bulletins, staff accounting manuals, staff legal bulletins, staff "no-action," interpretive and exemptive letters, and staff compliance and disclosure interpretations (including "telephone interpretations") of such section or rule by the Commission. Each of the parties has participated in the drafting and negotiation of this Warrant. If an ambiguity or question of intent or interpretation arises, this Warrant shall be construed as if it were drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Warrant.

(p) Further Assurances. Each party hereto shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Warrant and the consummation of the transactions contemplated hereby.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

PAR TECHNOLOGY CORPORATION

By: /s/ Savneet Singh
Name: Savneet Singh
Title: Chief Executive Officer and President

[Signature Page to Common Stock Purchase Warrant]

Accepted and agreed,

PAR Act III, LLC

By: /s/ Ronald M. Shaich
Name: Ronald M. Shaich
Title: Chief Executive Officer

[Signature Page to Common Stock Purchase Warrant]

Annex

NOTICE OF EXERCISE

To: PAR Technology Corporation

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Common Stock Purchase Warrant (the "***Warrant***"), and tenders herewith payment of the applicable exercise price, together with all applicable transfer taxes, if any. Capitalized terms used and not otherwise defined in this Notice of Exercise that are defined in the Warrant shall have the respective meanings ascribed to such terms in the Warrant.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States;

☐ if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Section 2(c) of the Warrant, to exercise the Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in Section 2(c) of the Warrant; or

☐ if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Section 5 of the Warrant, to exercise the Warrant with respect to the cash amount payable by the Company pursuant to the procedure set forth in Section 5 of the Warrant.

(3) As to any fraction of a Warrant Share that the undersigned would otherwise be entitled to purchase in connection with this Notice of Exercise, please (check applicable box):

☐ pay an amount in cash pursuant to Section 2(d)(iv) of the Warrant; or

☐ round up to the next whole share.

(4) Other than with respect to an exercise pursuant to Section 5 of the Warrant, please issue said Warrant Shares in book-entry form in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number or by physical delivery of evidence of issuance of said Warrant Shares in book-entry form to:

_____

_____

_____

(5) With respect to an exercise pursuant to Section 5 of the Warrant, please pay the aggregate amount required by Section 5 of the Warrant by wire transfers of immediately available funds in U.S. dollars to one or more accounts set forth below:

_____

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, all of or [_____] of the shares of the foregoing Common Stock Purchase Warrant (the "***Warrant***") and all rights evidenced thereby are hereby assigned to

_____ whose address is

_____.

_____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

_____

Signature Guaranteed: _____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever, and must be guaranteed by a bank or trust company. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the Warrant.

Exhibit 99.1

FOR RELEASE:	NEW HARTFORD, NY, April 8, 2021
CONTACT:	Christopher R. Byrnes (315) 743-8376 chris_byrnes@partech.com, www.partech.com

PAR Technology Corporation acquires Leading Loyalty Provider Punchh Inc. for $500MM, Becoming a Unified Commerce Cloud Platform for Enterprise Restaurants.

Equity funding for the transaction led by Ron Shaich's Act III Holdings and funds and accounts advised by T. Rowe Price Associates, Inc.

NEW HARTFORD, N.Y., April 8, 2021 – PAR Technology Corporation (NYSE: PAR), a leading global provider of restaurant software, today announced that it has acquired Punchh Inc. ("Punchh"), a leader in loyalty and guest engagement solutions, for approximately $500 million paid in cash and shares of PAR common stock to Punchh stockholders. This acquisition makes PAR a unified commerce cloud platform for enterprise restaurants and positions PAR to lead the industry with integrated point-of-sale, back office, payment and guest engagement solutions.

Savneet Singh, PAR Technology Corporation CEO & President, said "Today there is a conflict between restaurants and technology. The quantity of new software applications is making it difficult for restaurants to navigate complex integration networks and taking away from focusing on their guests. Meanwhile, online marketplaces are becoming intermediaries between restaurants and their guests. With the Punchh acquisition, we are building a platform that enables restaurants to scale quickly, own their path to innovation, and take back their guest relationship. This eliminates the need for juggling disjointed vendors, developing cumbersome point-to-point integrations, and relying on 3rd party dependencies. At the same time, Punchh advances our ability to provide customers with an end-to-end solution, from guest-to-kitchen, through one unified data source."

Singh added, "In our view, Punchh is the pre-eminent loyalty and CRM SaaS provider to enterprise restaurants. They boast a blue-chip roster of customers, industry-leading growth, 100%+ net dollar retention and very high customer NPS scores. Punchh's highly experienced team are among the industry's best – we're beyond excited to have them join us on our ambitious journey. I am also pleased to report that the combined companies, on a pro-forma basis, at the end of 2020, would have generated $65 million in run-rate ARR, while maintaining our growth and net dollar retention."

Shyam Rao, Co-founder and President of Punchh, said "With its Brink POS®, PAR has been a Punchh partner for many years. We've gotten to know them while jointly servicing customers and have always been impressed with their focus on their customer's success. PAR's point-of-sale and back-office solutions combined with our loyalty and engagement platform give customers an end-to-end solution for top-line growth, profitable guest relationships and operational efficiencies. We're excited to join the PAR team and further our offerings to the hospitality industry."

PAR financed the cash consideration of the purchase price through a combination of equity and debt, including proceeds from the sale of $160 million of PAR common stock to PAR Act III, LLC (“Act III”) and to funds and accounts advised by T. Rowe Price Associates, Inc. and a $180 million senior secured term loan under a credit agreement, with Owl Rock First Lien Master Fund, L.P., as administrative and collateral agent.

Keith Pascal, Act III Partner, joins the Board of Directors of PAR Technology Corporation and, Ron Shaich, Act III Managing Partner and founder of Panera Bread, takes a Board Observer seat.

Shaich said, “We are thrilled to join this journey with PAR and Punchh. As a founder and long-time CEO of a large restaurant company, I understand first-hand the struggles of trying to power a large enterprise by gluing together disparate technologies from multiple vendors which results in silos of data, increased management costs and barriers to agile innovation. However, those restaurant brands that can create a differentiated guest experience, aided by seamless omnichannel technology and a superior understanding of their guests’ preferences and behaviors, will be best positioned to win in the ever increasingly competitive restaurant marketplace. I believe PAR’s vision of a unified commerce cloud will enable more restaurant enterprises to compete effectively and efficiently in the digital arms race.”

Goldman Sachs & Co. LLC served as financial advisor to PAR Technology Corporation, and as sole placement agent in connection with the concurrent financing transactions. Gibson, Dunn & Crutcher LLP served as legal counsel to PAR Technology Corporation in connection with the acquisition and financing transactions.

J.P. Morgan Securities LLC served as exclusive financial advisor and Fenwick & West LLP as legal counsel to Punchh.

PAR Management will host a conference call to discuss the transaction at 10:30 a.m. ET on Thursday, April 8, 2021. To participate in the call, please call **844-419-5412**, approximately 10 minutes in advance. No passcode is required to participate in the live call. Individual & Institutional Investors will have the opportunity to listen to the conference call/event over the internet by visiting PAR’s website at www.partech.com/about-us/investor-relations/ Alternatively, listeners may access an archived version of the presentation call after 8:30 p.m. on April 8 through April 15, 2021 by dialing **855-859-2056 and using conference ID 9192656.**

PAR Technology looks forward to your participation in this conference call. Please call Tiffani Temple at 315-738-0600 x 6325 with any questions.

This press release contains “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, Section 27A of the Securities Act of 1933, as amended, and the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not historical in nature, but rather are predictive of PAR’s future operations, financial condition, business strategies and prospects. Forward-looking statements are generally identified by words such as “anticipate”, “believe,” “belief,” “continue,” “could,” “expect,” “estimate,” “intend,” “may,” “opportunity,” “plan,” “should,” “will,” “would,” “will likely result,” and similar expressions. Forward-looking statements are based on current expectations and assumptions as to future occurrences and trends, including statements expressing optimism or pessimism about future operating results or events and projected sales, earnings, capital expenditures and business strategies, that are subject to risks and uncertainties, which could cause actual results to differ materially from those expressed in, or implied by, the forward-looking statements, including potential business uncertainties relating to the acquisition, disruptions to PAR’s business and operational relationships, PAR’s ability to achieve anticipated synergies, and the anticipated costs, timing and complexity of integration. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in PAR’s Annual Report on Form 10-K for the year ended December 31, 2020 and PAR’s other filings with the SEC. PAR undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events, or otherwise, except as may be required under applicable securities law.

About PAR Technology Corporation
PAR Technology Corporation through its wholly owned subsidiary ParTech, Inc., is a customer success-driven, global technology company with over 100,000 restaurants in more than 110 countries using its point-of-sale hardware and SaaS software. PAR Technology Corporation's stock is traded on the New York Stock Exchange under the symbol PAR (NYSE: PAR). For more information, visit www.partech.com or connect with PAR on Facebook or Twitter.

About Punchh
Punchh is a leading loyalty and engagement solution for restaurant, retail, and convenience store brands. For a decade Punchh has created consistent, modern loyalty experiences to help physical retailers understand their guests and use real data insights to serve them best. Powered through A.I., the company builds meaningful relationships and dramatically increases lifetime guests. For more information please visit www.punchh.com.

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Document and Entity Information	Apr. 08, 2021
Cover [Abstract]	
Document Type	8-K
Amendment Flag	false
Document Period End Date	Apr. 08, 2021
Entity Registrant Name	PAR Technology Corporation
Entity Incorporation, State or Country Code	DE
Entity File Number	1-09720
Entity Tax Identification Number	16-1434688
Entity Address, Address Line One	PAR Technology Park
Entity Address, Address Line Two	8383 Seneca Turnpike
Entity Address, City or Town	New Hartford
Entity Address, State or Province	NY
Entity Address, Postal Zip Code	13413-4991
City Area Code	315
Local Phone Number	738-0600
Written Communications	false
Soliciting Material	false
Pre-commencement Tender Offer	false
Pre-commencement Issuer Tender Offer	false
Entity Emerging Growth Company	false
Entity Central Index Key	0000708821
Title of 12(b) Security	Common Stock
Trading Symbol	PAR
Security Exchange Name	NYSE

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    "label": "Entity Address, City or Town"
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    "label": "Entity Registrant Name"
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         "label": "Trading Symbol"
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    "Number": "240",
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    "Section": "12",
    "Subsection": "d1-1"
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    "Publisher": "SEC",
    "Section": "13e",
    "Subsection": "4c"
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    "Publisher": "SEC",
    "Section": "14d",
    "Subsection": "2b"
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    "Publisher": "SEC",
    "Section": "14a",
    "Subsection": "12"
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    "Number": "240",
    "Publisher": "SEC",
    "Section": "12",
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